Opening speech of John W. Ashmead, United States District Attorney

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OPENING SPEECH OF JOHN W. ASHMEAD, UNITED STATES DISTRICT ATTORNEY, IN THE CASE OF THE UNITED STATES VS. CASTNER HANWAY, INDICTED FOR TREASON, IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA, Delivered November 28, 1851.

SPEECH.

May it Please the Court,—Gentlemen of the Jury —

It becomes my duty, as the officer charged by the law with the prosecution of crimes and offences committed against the laws of the United States within the Eastern District of Pennsylvania, to submit for your consideration the indictment upon which the prisoner at the bar has been arraigned, in order that you may determine upon the question of his guilt or innocence. It charges him with the commission of a crime of a highly aggravated character; in its nature, the most serious that can be perpetrated against a human government. It is technally called high treason, and is defined in the Constitution of the United States and the Act of Congress of 30th April, 1790. It consists in this country only in levying war against the United States, and in adhering to their enemies, by giving to them

aid and comfort. The treason charged against the prisoner at the bar, is that of levying war against the United States; and I desire you distinctly to understand that it is not a case of constructive treason, but one of actual treason, and embraced within the perview of the Constitution and the Act of Congress to which allusion has been made. What the law is upon this subject I will fully explain before I conclude my opening remarks; but I now state that any combination or conspiracy by force and intimidation to prevent the execution of an Act of Congress, so as to render it inoperative and ineffective, is in legal estimation high treason, being an usurpation of the authority of government. This construction of the Constitution of the United States has been cotemporaneous with the adoption of that instrument, and every judge, whether state or federal, Whose attention has been directed to the subject, has agreed in this interpretation. It was so held in the cases of the Western insurgents in 1795, in the cases of the Northampton insurgents in 1799, in the case of Aaron Burr in 1807, by Judge Story in his charge to the Grand Jury in 1842, by Judge King, President of the Court of Common Pleas of this county, in his charge to the Grand Jury, in 4 1846, and in 1851 by his Honor, Judge Kane, who reviewed the whole law upon this subject, in a clear and conclusive opinion, which has been before the country since the 29th of September last.

The treason charged against the defendant is, that he wickedly devised and intended to disturb the peace and tranquility of the United States, by preventing the execution of the laws within the same, to wit: a law of the United States, entitled “An Act respecting fugitives from justice, and persons escaping from the service of their masters, approved February 12, 1793;” and also a law of the United states, entitled “An Act to amend, and supplementary to the Act entitled ‘An act respecting fugitives from justice, and persons escaping from the service of their masters, approved February 12, 1793,’” which supplementary act was approved the 18th of September, 1850, generally known as the Fugitive Slave Law. The overt acts, which may be considered as the evidence or manifestation of the manner in which the treason was committed, are set forth in the indictment as follows:—

First.—That on the 11th of September, 1851, in the county of Lancaster, and within the jurisdiction of this Court, the defendant, with a great number of persons, armed and arrayed in a warlike manner, with guns, swords, and other weapons, assembled and traitorously combined to oppose and prevent by intimidation and violence, the execution of the laws of the United States already adverted to, and arrayed himself in a warlike manner against the said United States.

Second.—That at the same lime and place, the said Castner Hanway assembled with others, with the avowed intention by force and intimidation, to prevent the execution of the said laws to which I have alluded, and that in pursuance of this combination, he unlawfully and traitorously resisted and opposed Henry H. Kline, an officer duly appointed by Edward D. Ingraham, Esq., a Commissioner of the Circuit Court of the United States, from executing lawful process to him directed against certain persons charged before the Commissioner with being persons held to service or labor in the State of Maryland, owing such service and labor to a certain Edward Gorsuch, under the laws of the State of Maryland, who had escaped into the Eastern District of Pennsylvania.

Third.—That in further execution of his wicked design, the defendant assembled with certain persons who were armed and arrayed with the design, by means of intimidation and violence, to prevent 5 the execution of the laws already alluded to, and being so assembled, knowingly and willingly assaulted Henry H. Kline, the officer appointed by the Commissioner to execute his process, and then and there, against the will of the said Henry H. Kline, liberated and took out of his custody persons before that time arrested by him.

Fourth.—That the defendant, in pursuance of his traitorous combination and conspiracy to oppose and prevent the said laws of the United States from being carried into execution, conspired and agreed with others to oppose and prevent by force and intimidation the

execution of the said laws, and in the ways already described, did violently resist and oppose them.

Fifth.—That the defendant in pursuance of his combination to oppose and resist the said laws of the United States, prepared and composed divers books and pamphlets, and maliciously and traitorously distributed them, which books and pamphlets contained incitements and encouragements to induce and persuade persons held to service in any of the United States by the laws thereof, who had escaped into this district, as well as other persons, citizens of this district, to resist and oppose by violence and intimidation the execution of the said laws, and also containing instructions how, and upon what occasions the traitorous purposes should and ought to be carried into effect.

The overt acts which I have now described embrace all the charges which the government presents against this defendant. I need riot say to you that they are altogether of an extraordinary character, and such as, in this country, are seldom presented for the consideration of a court and jury. In monarchical governments, it is true, crimes of this description are of frequent occurrence; but in a government like ours they are but seldom committed. The tyranny to which the subjects of despotisms are exposed, may so burden and oppress them, that longer submission becomes intolerable, and they are driven to efforts to shake it off. The failure to succeed involves them in the guilt of treason, and trial and conviction for the offence follow as a consequence. In governments so constituted, the only hope for a change exists in revolution, and hence the attempt made is to overturn the whole fabric of government. Under such circumstances, treason may become patriotism, and the friends of liberty throughout the world may ardently wish for its success. No such excuse, however, exists with us; for our institutions are based upon 6 the inherent right of the people to change and modify their form of government. In the Constitution of the United States, as well as in those of the several States, modes are provided by which their provisions can be altered. If obnoxious acts of Congress are passed, they can be changed or repealed. Hence this defendant, if he has perpetrated the offence charged in the

indictment, has raised his hand without excuse or palliation against the freest government on the face of the earth. He has not only set its laws at defiance, by seeking to overturn them, and to render them inoperative and void; but the conspiracy into which he entered, assumed a deeper and more malignant dye from the wanton manner in which it was actually consummated. I allude to the murder in which it resulted. An honorable and worthy citizen of a neighboring State, who entered our Commonwealth under the protection of the Constitution and Laws of the Union, for the purpose of claiming his property under due process of law, was mercilessly beaten and murdered, in consequence of the acts of the defendant and his associates. It is a disgrace upon our national escutcheon; a blot upon the fair fame of Pennsylvania; a reproach which nothing short of the conviction and punishment of the offenders can ever wipe out. It is for you, gentlemen of the jury, to judge of the evidence which the government will submit in this case; and I need not say to you, that if it proves the defendant to have been one of the actors in the bloody tragedy at Christiana, that you will find him guilty of the offence.

I do not desire in the course of my remarks, to say anything which may be calculated unnecessarily to inflame your minds against the defendant. I trust he may be able to convince you that he had no participation in the dreadful transactions of the 11th of September, and thus rescue his name from the obloquy and infamy which would otherwise attach to it. He has a right to demand a fair and impartial hearing at your hands, and a candid and dispassionate consideration of the testimony which he may produce. Nay, he is entitled to even more than this; for every reasonable doubt which may arise in the cause is to be resolved in his favor. He is not to be required to establish his innocence, but it is for the prosecution to make out and prove his guilt. The Government of the United States does not ask any man's conviction on testimony which is uncertain in its nature, and not adequate to establish the facts for which it is adduced. On the other hand, we have a right to expect from you a fair and impartial discharge of public duty. A 7 heavy responsibility rests upon you, and there is no way of evading its requirements. If it can be shown by competent and creditable testimony that the defendant is guilty of the offence which is

charged in the indictment, it is essential to the peace of the country that you should say so by your verdict. Justice requires it, and the obligation of your oaths demand it.

I need hardly say to you that the outrage perpetrated at Christiana was, in my judgment, treason against the United States; and all who participated in it are guilty of that offence. It was a concerted and combined resistance of a statute of the United States by force, and was made with the declared intent, so far as the defendant Hanway was concerned, to render its provisions void, and to make the act altogether inoperative. The proof against him will be clear and convincing, and such as to satisfy every one of his guilt. The overt acts will be established by the testimony of more than two witnesses, in so pointed and distinct a manner that no question of their truth can exist.

In order that you may fully understand the character of the evidence which we propose to introduce, I will give you a brief narrative of the facts as they will be detailed by the witnesses.

On the 9th of September last, Edward D. Ingraham, Esq., a Commissioner of the United States, issued four warrants, directed to Henry H. Kline, an officer appointed by him under the authority of the Act of 13th September, 1850, commanding him to apprehend Noah Bailey, Nelson Ford, Joshua Hammond and George Hammond, who had been legally charged before the said Commissioner with being fugitives from labor, who had escaped from the State of Maryland into the State of Pennsylvania, and owed such service and labor to a certain Edward Gorsuch. The fact that the writs had been issued, became known to a colored man living in this city, named Samuel Williams, who preceded the officers to the neighborhood where the slaves resided, and where the arrests were to have been made, and gave notice that they were coming to execute them. On the 11th of September, Kline and his party, consisting of Edward Gorsuch, Dickerson Gorsuch, Joshua M. Gorsuch, Dr. Thomas Pearce, Nicholas Hutchings and Nathan Nelson, proceeded to Christiana, Lancaster County, and on arriving there, started for Parker's house, a place about three miles distant from the railroad depot on the Columbia road,

which they reached about day-light in the morning. While proceeding along the road, and 8 across the fields, their attention was arrested by the sound of horns, and the blowing of a bugle. After watching about Parker's house for a short time, one or two negroes were seen coming out of it. On discovering Kline and his party they fled back into the house, and on pursuit being made by him, they ran up stairs. These negroes were recognized by Edward Gorsuch and known to be his slaves. Kline entered the house, and almost immediately ascertained that a large number of negroes were concealed in the upper part of it; he nevertheless went to the stairway and called the keeper of the house to come down, stating that he was desirous of speaking to him. The negroes at this time were heard loading their guns. Kline hearing the noise, said to them that there was no occasion for arming themselves,—that he designed to harm no one, but meant to arrest two men who were in the house, for whom he had warrants. Some one replied they would not come down. Edward Gorsuch then went himself to the stairway, called his slaves by name, and stated that if they would come down and return home he would treat them kindly and forgive the past. Kline then read the warrants three times, and afterwards attempted to go up stairs, when a sharp pointed instrument was thrust at him, and an axe afterwards thrown down which struck two of the party below. Edward Gorsuch then went to the front door of the house, and looking up to the window, again called to his slaves by name, when a shot was fired at him from the window. In order to intimidate the blacks, Kline fired his pistol. At this period a horn was blown in the house which was answered by other horns from the outside, as if by pre-concerted action. The negroes then asked fifteen minutes time for consideration, which was granted to them. At this moment a white man was seen approaching the house on horseback. It turned out to be Castner Hanway, the present defendant. Kline immediately walked towards him and inquired if he resided in the neighborhood. His answer was short and rude: “It is none of your business.” Kline replied by letting him know he was a Deputy Marshal of the United States, gave him the warrants to read, and called upon him in the name of the United States to assist in making the arrests. Hanway replied “he would not assist—that he did not care for that act of Congress or any other act,—that the negroes had rights and could defend themselves, and that he

need not come there to make arrests, for he could not do it." By this time another white man had arrived on the ground, (Elijah Lewis,) who walked up to Kline and asked him for his authority to 9 be there. Kline showed his papers to him also. Lewis then read the warrants, passed them to Hanway, who returned them to the Marshal. Lewis, after reading the warrants, said "the negroes had a right to defend themselves." Kline then called upon him to assist him in making the arrests, when he refused, and would not even tell his name. Kline them asked Hanway where his residence was; he replied "you must find that out the best way you can." Kline then explained to them what his views of the act of Congress of 1850 were, and informed them that through their agency these slaves would escape. By this time the blacks had gathered in very large numbers around the house, armed with guns, which they commenced pointing towards the Marshal. At this juncture, Kline implored Hanway and Lewis to keep the negroes from firing, and he would withdraw his men, leave the ground, and let the negroes go. Hanway instantly replied, "they had a right to defend themselves, and he would not interfere." Kline's answer was, "they were not good citizens, or they never would permit the laws to be set at defiance, in this way." Dr. Pearce then remarked "that all they wanted was their property, and that they did not wish to hurt a hair of any one's head." Lewis replied "that negroes were not property," and then walked away. By this time another gang of negroes had arrived, armed with guns and clubs, and Hanway rode up to them and said something in a low tone of voice. He moved his horse out of the way of the guns; the negroes shouted, and immediately fired from every direction. Hanway rode a short distance down the lane leading from Parker's house, and sat on his horse watching the blacks. Kline then called to Lewis, telling him a man was shot, and begging him to come and assist, which Lewis refused to do. This conversation took place at the bars on the short lane, which will be shown to you upon the plan we purpose giving in evidence. While this conversation was going on, and just before the firing commenced, Edward Gorsuch was standing in the short lane, about half way between the bars and the house. Joshua M. Gorsuch was standing near him; Dickinson Gorsuch was in the short lane, not so near his father as was Joshua, and Dr. Pearce, Mr Hutchings and Mr. Nelson were somewhere near the same spot. The number of negroes assembled

at this time must have exceeded one hundred. Before the firing commenced, Edward Gorsuch was struck with a club on the back part of the hand, and fell forward on his hands and knees. As he was struggling to rise, and in the act 2 10 of getting upon his feet, he was shot down, and when prostrate on the ground, was cut on the head with a corn cutter, and beaten with clubs. Dickinson Gorsuch, on perceiving the attack made upon his father, immediately rushed to his assistance, when his revolver was knocked out of his hand, and he himself shot in various parts of the body, producing intense agony, and rendering him utterly helpless. Joshua M. Gorsuch was attacked at the same time, and defended himself with his revolver, which he twice snapped at his assailants, but the powder being wet it would not go off. He was also struck down and cruelly beaten and maltreated. When the firing commenced, Kline, in order to avoid its effects, escaped into a corn-field, but on seeing Dickinson Gorsuch struggling in the short lane apparently wounded and bleeding, at the risk of his own life he went to his assistance, and placed him under the shelter of a free until aid could be procured. Hutchings and Nelson, two of the others, were at this time making their escape, the negroes being in full pursuit. Dr. Pearce and Joshua Gorsuch retreated by the short lane, and a number of shots were fired at them as they moved off. Dr. Pearce was shot in the wrist, side and shoulder, and a ball also passed through his hat just above his forehead. In the effort to escape, these latter gentlemen rushed towards Hanway, who was still sitting on his horse in the long lane. They besought him to prevent the negroes from pursuing farther. He said he could not. They then asked permission to get upon his horse, which would afford the means of making their escape. He refused their request, and putting whip to his horse rode off at full speed. This mode of a safe retreat being denied to Dr. Pearce and Joshua Gorsuch, their only hope was in continuing to run. Pearce was in front and Joshua Gorsuch behind. In looking back, Dr. Pearce saw a negro who had previously fired at him, strike Joshua Gorsuch with a gun, which felled him to the earth, and only escaped himself by rushing into a neighboring farm-house, where he was concealed from view. Joshua M. Gorsuch and Dickinson Gorsuch were subsequently carried to houses in the vicinity, and were a long time recovering from their wounds. In

connection with this narrative of facts, I will also state that there are two or three other matters which will appear in the course of the testimony to which I shall call your attention.

First—That so soon as Hanway appeared at the bars, the negroes in Parker's house appeared evidently to be encouraged, and 11 gave a shout of satisfaction; when before that they had appeared discouraged and had asked for time.

Second—That before the firing commenced, Kline had given orders to his party to retreat and they were actually engaged in the retreat when the attack was made.

Third—That Edward Gorsuch, who was killed, had no weapon of any kind in his hands, and was therefore cruelly, wantonly and unnecessarily wounded by the defendant and his associates, while carrying out their combination and conspiracy to resist, oppose and render inoperative and void the acts of Congress referred to in the indictment.

Such, Gentlemen of the Jury, is the general outline of the facts, which I propose to give in evidence, in order to sustain the accusasations contained in the indictment. The details of the testimony, as you will receive it from the witnesses, will fully complete this sketch. If the result of the investigation exhibits the state of facts which I anticipate, it will be contended on behalf of the United States, that the crime of High Treason has been established against the defendant; and that you, faithfully, honestly and fearlessly responding to the obligations of your oaths, will say so by your verdict.

Treason against the United States, as defined by the Third Section of the Third Article of the National Constitution, consists in levying war against them, or in adhering to their enemies, giving them aid and comfort. The crime charged against this defendant, is that embraced under the first of these subdivisions, viz: that of *levying war against the United States.* The phrase, levying war, was long before the adoption of the Constitution, a phrase of well-known legal signification, embracing such a forcible resistance to the laws as that charged against this defendant. Since the adoption of the Constitution, it has received a similar construction from the Federal Judiciary, and may now be considered

as a settled principle of the criminal code of the United States. The judicial decisions upon which this position is predicated, will be submitted to the Court in the course of this address, in that which I regard as its appropriate place.

The Act of Congress, which the defendant is charged to have forcibly, violently and treasonably resisted, is an Act approved on the 18th of September, 1850, entitled " An Act to amend, and supplementary to the Act entitled: 'An Act respecting fugitives from justice, and persons escaping from the service of their masters, approved 12 February 12th, 1793.'" The original Act of 1793, and the supplement of 1850, are based on the provision of the Second Section of the 4th Article of the Constitution of the United States, and are intended to carry into full and faithful execution the clear, positive and unequivocal injunctions of that instrument. The Section which I allude to, declares that "No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due." It is almost needless to say, that without this provision, the Constitution of the United States never could have been adopted; the existing National Union never could have been formed, and the powerful, prosperous, and glorious Republic of the United States, never could have existed among the nations of the earth. Of the value of this Union, not only to us as a separate people, but to the common family of mankind, I admit my utter inadequacy to form an estimate, regarding it as one of those great blessings of Divine Providence which human intellect cannot fathom; and which increases in appreciation with the progressive development of its benefits.

The Constitution of the United States, you are aware, was adopted by a convention of the people of the States, on the 17th of September, 1787. At the second session of the Second Congress, held under that instrument, viz: on the 12th day of February, 1793, was passed the "Act respecting fugitives from justice, and persons escaping from the service of their masters." Its provisions were plain, simple, and clear; manifesting on the part of its framers, many of whom had been members of the National Convention which had

previously flamed the Constitution, a frank, honest and sincere disposition to carry into effect a constitutional injunction, which moat probably was unpalatable to some of them. The law is sufficiently brief to justify my reading a portion of it. The third and fourth sections of it are as follows:

Sec. 3. That when a person held to labor in any of the United States, or in either of the Territories on the North West or South of the river Ohio, under the laws thereof, shall escape into any other of the said States or Territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any Judge of the Circuit or District Courts of the U. States, residing or being within the State, or before any magistrate of a 13 county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested, doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such Judge or Magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or Territory from which he or she fled.

Sec. 4. That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney when so arrested pursuant to the authority herein given or declared, or shall harbor or conceal such person after notice, that he or she was a fugitive flora labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of Five Hundred Dollars, which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for, or on account of the said injuries, or either of them.

For a series of years after its passage, this law was quietly executed, according to its spirit and letter: neither State Legislatures nor State Judiciaries throwing any obstructions in its way. On the exciting topic of domestic slavery, peace reigned within our borders. In such of the States as deemed this institution incompatible with their interest, or where it was repugnant to the popular feeling, it was abolished cautiously, prudently and progressively. But everywhere the solemn obligations of the Constitution, to surrender the absconding slave to his rightful claimant, was admitted, respected and complied with. Men had not then become wiser than the laws, nor had they learned to measure the plain and unambiguous letter of the Constitution by an artificial standard of their own creation; and to obey or disregard it according as it came up to, or fell beneath it A change, however, came over the spirit of a portion of the people of some of the States. This change of sentiment soon manifested itself in the enactments of State Legislatures, and in the decisions of State Judiciaries consequent upon them, which created such embarrassments and difficulties in the execution of the Act of 1793, as to render it, practically speaking, a dead letter in some of 14 the States. I do not propose to enter into any detailed history of this legislation, or of these adjudications. That would be alike fatiguing to you, and of little value in the consideration of the matter in hand. I will, however, refer to the legislation of our own Commonwealth, which though generally characterized by fidelity to the National compact, still shows that this new influence, to a certain extent, had even affected her usually steadfast and solid character. On the 26th of March, 1826, the Legislature of Pennsylvania passed an act entitled “An Act to give effect to the provisions of the Constitution of the United States, relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping.”

This statute purporting to be intended to give effect to the provisions of the Constitution, relative to fugitives from labor, deprived all the aldermen and justices of the peace of power to hear and decide upon the cases of such fugitives, confining their authority to the issuing of warrants for the arrest of such fugitives, which warrants were, however, to be made returnable before, and the complaint to be heard by a judge of the proper county.

The Ninth Section of the Act declaring that no Alderman or Justice of the peace should take cognizance of the case of any fugitive from labor from any of the United States under the Act of 1793, and forbiding them to grant any certificate or warrant of removal of such fugitive, upon the application, affidavit or testimony of any person or persons whatsoever, under the said Act of Congress, or any other law, authority or Act of the Congress of the United States, under penalty of being guilty of a misdemeanor in office, and of incurring a fine of not less than Five Hundred, nor exceeding One Thousand Dollars. This Act, however, authorized the Judge, before whom an alleged fugitive was brought, to take bail for his appearance until final hearing, or in default thereof to commit him to the common jail of the county for safe keeping, at the expense of the owner.

This law was followed by the Act of the 3d of March, 1847, the third section of which absolutely forbids any judge of the Commonwealth from taking cognizance of the case of any fugitive from labor from any of the United States, under the Act of 1793. The sixth section even declares that “it shall not be lawful to use any jail or prison of the Commonwealth for the detention of any person claimed as a fugitive from servitude,” and subjects any jailor or prison-keeper offending against its provisions to a heavy pecuniary fine, and to a disqualification for life from holding such office or trust.

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The effect of the first of these acts was to render futile so much of the Act of Congress of the 12th of February, 1793, as imparted jurisdiction in the cases of fugitives from labor to State aldermen and justices of the peace, thus depriving the claimant of a convenient and accessible tribunal, before which he could bring his arrested fugitive servant, and referring him to the county judges. Those officers in many instances were only to be found at remote distances from the place of arrest; and during a large portion of their time were actually engaged in other public business, which necessarily hindered them from giving the prompt attention to such cases which their nature demanded. The necessity of carrying an arrested fugitive for long distances, through populations sometimes strongly prejudiced against the institution of slavery, rendered arrests hazardous; sometimes,

indeed, subjecting claimants to personal dangers, which prudent men were not willing to encounter, even in the pursuit of their rights. But still the Act of 1826 left a local State tribunal in every county, though an inconvenient one, to which a claimant under the Act of 1793 could apply. But the Act of 1847 took that away from him by forbidding the State judiciary to take cognizance of the case of a fugitive from labor under the Act of 1793. And the use of the county prison was refused for the detention of any person claimed as such a fugitive.

What was the actual state of things produced by the operation of these laws? None but a Judge of the United States could aid the claimant of a fugitive from labor, and that Judge could not commit such fugitive to any county prison for safe keeping, pending an investigation before him. At that time the United States had three Judges in this State, having jurisdiction in cases of fugitives from labor. The Judge of the Eastern District, residing in Philadelphia; the Judge of the Western District, residing at Pittsburg, and the Circuit Judge, whose time was divided by the Circuit Courts, held in Philadelphia, Trenton, (New Jersey,) Williamsport and Pittsburg. And these Judges, located at such remote points, had no means given them to secure a person charged as fugitive from labor, even in the rare instances in which they could be brought before them. In this state of things, the arrest of a fugitive from labor in Pennsylvania, became, practically speaking, an impossibility. Or, certainly, in nine cases out of ten, the promises of the Constitution and the laws to the claimant of a fugitive from labor, became the merest delusion. In other States of the Union, laws of an equally urgent 16 and embarrassing character prevailed, until the provisions of the Constitution respecting fugitives from labor, and the laws passed to carry it into execution had almost reached the point of absolute nullity: And this great nation found itself in the position of those weak and feeble governments in which there exist “laws for all faults; But faults so count'nanc'd, that the strongest statutes Stand like the forfeits in a barber's shop, As much in mock as mart.”

Under such a state of things, what was justly to be expected from those States which had entered the National Compact, under the solemn guarantees and pledges of the

Constitution? Deep feelings, intense excitements arising from wounded sensibility, mortified pride, and great personal interests believed to be placed in jeopardy. Of this state of public feeling, in some instances it is to be feared bad and designing men sought to take the advantage, until in the fierceness of the conflict that arose, our noble Union seemed to rock on its foundation. But the saving Spirit, which has ever guided our national destinies, rose bright and glorious above the storm, pointing out to anxious patriotism the haven of peace, concord and union, in the adoption of the Compromises of the ever-to-be-remembered session of 1850. Among these is to be found the Act of the 18th September, 1850, the law, the execution of which this defendant is charged in combination and by preconcert with others, to have resisted even unto blood and death. This Act, which has been so much commented upon, is in fact less urgent in its features, and better calculated to prevent abuses than the original Act of February 1793, of which it purports to be an amendment. By the Act of 1793, *any* Magistrate of *any County, City* or *Town Corporate,* wherein an alleged fugitive from labor may have been arrested, is authorised to take jurisdiction of the complaint, and grant the required certificate for his removal to the State or Territory from which he has fled. In lieu of this almost universal magistracy, from which the claimant might have made his choice under the Act of 1793, he must under the Act of 1850 make his application to a Judge of the Circuit or District Courts of the United States, or to a Commissioner appointed by the Circuit Court:—an officer directly responsible to the Judge of the Circuit Court of the United States, by whom he is appointed, and whose duty it is to see that the high trust reposed by him in such Commissioner is faithfully, wisely, and humanely executed. This removes one of the objections made to the 17 Act of 1793, which was, that it gave the complainant the choice of the magistrate to whom he might apply, and thus gave room to the choice of one whose prejudices or interests might be operated upon to the disadvantage of the alleged fugitive. The process under the law of 1793, when process preceded the arrest of an alleged fugitive, might be executed by any peace officer selected by the claimant; while under the Act of 1850, it must be either executed by the Marshal or his deputy, or by a proper person designated by the Commissioner issuing the process; who is in this, as in all other parts of the execution

of his office, immediately responsible to the Judge of the Supreme Court of the United States, by whom he is chosen. The high, dignified and responsible public station accupied by a Judge of the Supreme National Tribunal, affords a safe guarantee that no trust reposed by him in a subordinate, shall be abused without the certainty of prompt redress. And who can doubt that if a Commissioner should abuse his power, in the selection of the agent designated by him to execute his process, the Judge from whom he derived his functions would promptly deprive him of them.

The Act of 1793, like that of 1850, authorized the original arrest of the fugitive without warrant. In this feature the laws are the same. The nature of the proof under the two Acts are also identical. They may be either oral testimony delivered to the judge or magistrate hearing the cause, or affidavits taken and certified by a magistrate from the State or Territory from whence the alleged fugitive is said to have fled. The conclusiveness of the certificate of removal is equal under the two laws. Under the Act of 1850, it is declared so in terms. Under the Act of 1793, it was the same in effect, the Supreme Court of this State having so held, in cases in which attempts have been made to go behind the certificate of removal after it had been granted. If the laws of 1793 and 1850 are substantially identical, why is it that the latter has been so assaulted? And why has the effort been so industriously prosecuted to convince the people of the United States that some new and terrible anomaly has been introduced into the National Legislation by the Act of 1850? The answer to this inquiry is alike simple and conclusive. The Act of 1793 professed to give a remedy, but afforded no adequate means of enforcing it, independent of the aid of the local state magistracy. State legislation, by interdicting the action of the local state magistracy in its execution, deprived the law of vital power, made it the noisy thunder which stuns and confuses, 3 18 while it deprived it of the lightning which strikes and penetrates. So long as the Act of 1793 was suffered to sleep in the statute book in lifeless inactivity, all was well with those who were willing “To keep the word of promise to the ear, And break it to the hope.”

But when the Act of 1850 imparted life to its torpid antecedent, by giving it a sanction by which its promises could be enforced and realized, then burst forth the clamors against the law, which have so long filled the public ear. Remedial laws, without corresponding sanctions by which their proposed remedies may be obtained, are, at best, legislative cheats. Honest legislation never professes to afford a remedy, without furnishing the means necessary and proper to attain it.

To furnish such means of arriving at Constitutional rights, was the end and object of the Act of 1850, to which the Act of 1793 had become inadequate, by reason of counteracting state legislation. This, and no more, is the head and from of the offending of the calumniated law. It was against the execution of *this* law that the defendant arrayed himself by combination, confederacy and preconcert with others, who are hereafter to answer for their participation in the crime. It was in opposition to the execution of *this* law that he associated himself with others equally reckless—armed with the weapons of blood and death. It was with this object and by this association that the blood of an unoffending American citizen, entering into our Commonwealth in pursuit of his legal rights, and acting under the sanction of the laws of the Union, has been shed. Shall this deed of blood and horror escape unpunished? Shall its repetition be invited by the impunity which shall follow the offender? The response to these questions must come from the Jury box. *There* rests its terrible responsibility. If this response shall be in the affirmative, then a dark and heavy cloud will have passed over the sun-light of the American Union. For when the laws of the Union, enacted in pursuance of the Constitution and responsive to its most direct obligations, cannot be enforced in its judicial tribunals, then, indeed, is the beginning of the end arrived.

The subject which remains for me to consider is, whether the facts which I expect to prove, amount to such a forcible resistance of the public law, as makes the actors in it guilty of Treason, by levying war against the United States. I propose now to examine this question, and with that view ask your attention, and that of the Court, 19 to the

consideration of the law of the case. I need not say that you will receive the law from the Court, and that you are bound by the instructions which the Court may give in respect to it. In this particular there is no difference between civil and criminal causes. It is, therefore, in no sense true, that you are judges of the law, and you must take the interpretation which the Court puts upon it. You have a right to apply the law to the facts, but you have no right to go further. What then is the law? I have stated that treason against the laws of the United States consists, according to the Constitution, only in levying war against the United States, and giving to their enemies aid and comfort. What is meant by levying war against the United States, I proceed now to consider. It is a phrase the meaning of which is well settled and understood, both in England and the United States. The Statute of 25th Edward III. chap. 2, contains seven descriptions of treason, and two of them are thus stated by Blackstone:

1st. If a man do levy war against our Lord the King in his realm.

2. If a man adhere unto the Kings's enemies in his realm, giving to them aid and comfort in the realm or elsewhere.

These are the two kinds of treason which are defined in the Constitution of the United States, and the words used to describe them are borrowed from the English Statute, and had a well known legal signification at the time they were used by the framers of the Federal Constitution. This is expressly stated by Chief Justice Marshall, 2 Burr's trial, 401, his language being that “It is reasonable to suppose the term *levying war* is used in that instrument in the same sense in which it is understood in the English law to have been used in the Statute of 25 Edward III.” He then adds, “that principles laid down by such writers as Coke, Foster and Blackstone, are not lightly to be rejected.” He then defines at page 408 in what levying war consists; viz. “That where a body of men are assembled for the purpose of making war against the Government, and are in a condition to make war, the assemblage is an act of levying war.” Coke, Foster and the other English elementary writers clearly maintain the doctrine that any resistance to an Act of Parliament

by combination and force, to render it inoperative and ineffective, is treason by levying war; and the American authorities adopt the English doctrine. In the cases of the Western Insurgents, 2 Dallas, 345, 347, 355, also reported in Wharton's State 20 Trials, 182, Judge Patterson says, “If the object of the insurrection was to suppress the Excise office, *and to prevent the execution of an Act of Congress by force and intimidation,* the offence in legal estimation is high treason; it is an usurpation of the authority of the Government. It is high treason by levying war.” Judge Iredell, in the cases of the Northampton Insurgents, in his charge to the Grand Jury says, “I am warranted in saying, that if in the cases of the insurgents who may come under your consideration, the intention was to prevent by force the execution of an Act of Congress of the United States altogether, any forcible opposition calculated to carry that intimidation into effect, was a levying of war against the United States, and of course an act of treason. But if its intention was merely to defeat its operation in a *particular instance,* or through the agency of a particular officer, from some private or personal motive, though a high offence may have been committed, it did not amount to the crime of treason. *The particular motive, must however, be the sole ingredient* in the case, for if committed *with a general view to obstruct the execution of the Act,* the offence must be deemed treason.” In *Fries' case,* Wharton's State Trials, 534, Judge Peters, in his charge to the Grand Jury says, “It is treason in levying war against the United States for persons who have none but a common interest with their fellow-citizens, to oppose or prevent by force, numbers or intimidation, a public and general law of the United States, with intent to prevent its operation, or compel its repeal.” Again, “although but one law be immediately assailed, the treasonable design is completed, and the generality of the intent designated by a part assuming the government of the whole. Though punishments are designated by particular laws for certain inferior crimes, which if prosecuted, as substantive offences, and the sole object of the prosecution, are exclusively liable to the penalties directed by those laws, *yet when committed with treasonable ingredients,* these crimes become only circumstances or overt acts. The intent is the gist of the offence in treason.” Judge Iredell, in *Fries' case,* immediately follows Judge Peters; and referring to the law laid down by Judges Patterson and Peters in the

Western Insurgents, (2 Dallas R. 355,)says, “As I do not differ from that decision, my opinion is that the same declarations should be made upon the points of law at this time.” Judge Chase on the second trial of Fries, was on the bench, and in an elaborate opinion he maintains the doctrine which had been 21 ruled in the previous cases. Judge Story, in his charge to the Grand Jury, delivered June 15, 1842, (1 Story's Rep., 614,) says, “It is not necessary that it should be a direct and positive intention entirely to overthrow the government. It will be equally treason if the intention is by *force to prevent the execution of any one or more of the general laws of the United States,* or to resist the exercise of any ligitimate authority of the Government in its sovereign capacity. Thus, if there is an assembly of persons, with force with intent to prevent the collection of taxes lawful, or duties levied by the government, or to destroy all custom houses, or to resist the administration of justice in the United States, and they proceed to execute their purpose by force, there can be no doubt it would be treason against the United States.” Judge King, in his charge to the Grand Jury, on the occasion of the Kensington riots, holds the same doctrine. His language is, “that where the object of a riotous assembly is to prevent, by force and violence, the execution of any statute, or by force and violence to compel its repeal by the legislative authority, or to deprive any class of the community of the protection afforded by law, as burning down all churches or meeting-houses of a particular sect, under color of reforming a public grievance, or to release all prisoners in the public jails and the like, and the rioters proceed to execute by force their predetermined objects and intents, they are guilty of high treason in levying war.” To the same effect is the charge of the District Judge, (John K. Kane,) delivered to the Grand Jury on the 29th of September last. He says, “the expression levying war embraces not merely the act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the Constitution, or of a public statute, if accompanied or followed by an act of forcible opposition in pursuance of such combination.”

The authorities and opinions which I have quoted, are conclusive of the question of law, and prove that the forcible resistance to the execution of the law of the United States,

known as the Fugitive Slave law of 1850 which took place at Christiana on the 11th of September last, in which the defendant participated with others, if designed to render its provisions inoperative and void, was treason against the United States. It was a levying of war within the meaning of the Constitution. The intent with which the act was committed, is the essential ingredient in the offence. If it was not levelled at the statute, but simply designated to prevent the 22 arrest of the slaves belonging to the late Mr. Gorsuch, it amounted, so far as the United States is concerned, to nothing more than a high misdemeanor. The death which resulted from the violence, in this aspect of the case, would be indictable and punishable as murder by the laws of Pennsylvania, but could not be considered an act of treason. It is your peculiar province to pass upon the question of *intent,* and yon have a right to infer treasonable designs from the facts and circumstances which attended the transaction. The combination or conspiracy of the defendant with others, forcibly to resist the law at Christiana, can be established without direct proof. “The concert of purpose,” says his honor Judge Kane, “may be adduced from the concerted action itself, or it may be inferred from facts occurring at the time or afterwards, as well as before.” In this particular case, however, there is no necessity for inferential proof, so far as this defendant is concerned. His resistance to the law was open and declared. He avowed his determination on the spot, not to regard the provisions of the Fugitive Slave Law of 1850, or any other Act of Congress upon that subject, and in the very presence of an armed band of negroes, who had come together to resist the law, he declared that its supremacy should not be maintained by him, and that the rights of these insurgents were superior to any statute of the United States. “They are armed,” was his language, “and can defend themselves.”

It is manifest therefore, that Castner Hanway, so far as in him lay, had resolved to prevent the execution of these fugitive slave laws in every instance, and to make them a dead letter in the neighborhood and county in which he resided, so far as any ability or influence of his could contribute to that end. His conduct and language towards Kline, incited and encouraged all that followed afterwards, and the prisoner is legally and morally responsible

tot it. Had he chosen to discountenance this flagrant violation of law, and held the excited and infuriated blacks in check, the reputation of Pennsylvania never would have been tarnished by the disgraceful occurrence at Christiana, and a worthy and respected citizen of an adjoining state would not have been wantonly and wickedly murdered in cold blood, while engaged in the assertion of his legal rights. On Castner Hanway especially rests the guilt of the innocent blood which was spilt on that occasion. He may finally escape its consequences before this jury, because of some flaw or defect in the proof, but he never can flee from the reproaches of his own conscience, or the condemnation which every honorable and upright citizen will 23 pronounce upon his conduct. He is, however, in your hands, and I will say nothing calculated to create or array prejudices against him or his case.

I have thus, Gentlemen of the Jury, in the execution of my duties as opening counsel for the United States, detailed the facts of the cause you are about to try, as I believe they will be established by the evidence; and I have also explained the legal principles which I consider applicable to them. My duties in this respect are therefore fulfilled. Your graver and more solemn one is about to commence. Never were duties more intensely interesting in their character, or more absorbingly important in their results. The simple fact, that the issue you are about to determine, involves the life of a human being, imparts to it an absorbing interest, and demands what I am satisfied it will receive, your anxious, scrupulous, and careful attention.

But the inherent gravity of such an issue assumes even a deeper dye from the nature of the accusation involved in it, and from the influence your verdict may have on the future harmony and permanence of the National Union. It may be that the great political problem is now to be solved by you, whether the Constitution of the United States, and every part of it, is to be recognised and regarded throughout this land as the Supreme Law: whether its unequivocal mandates are to be evaded and disregarded, or whether they are to be obeyed, in that spirit of honesty and sincerity, so necessary to its perpetuity, and so essential to its effective action as the guardian of the rights of each individual

citizen, as well of the sovereign States composing the American Union. With you the deep trust may be safely reposed. This venerated hall from which the Declaration of American Independence was first proclaimed to an admiring world, never can be the scene of the violation of the Constitution, the noblest product of that Independence. For my own part, I enter into this investigation with the most absolute and abiding confidence in the jury box. The experience of my life has convinced me of the intelligence, patriotism and honesty of American juries. I have ever found them thoroughly imbued with the belief, that in them was essentially reposed the administration of the public law. Without fidelity and intelligence in the jury-box, the wisdom of the law-giver would be fruitless and unavailing.

All I ask of you, Gentlemen, is what I know you will readily award me,—a verdict according to law and the evidence in the 24 cause. Although your duties are solemn, they are simple, when confined within their legitimate limits. You are not called upon to determine the policy or impolicy of a public law. That belongs to another branch of the Government. selected by the people for that purpose, and directly responsible to them for their acts. To you rightly belongs the determination of the question, whether the laws have or have not been violated. If the evidence, therefore, brings home to this prisoner the crime charged against him in the indictment, faithful to the oaths you have taken, faithful to your duties as citizens, faithful to your high trust as jurors, you will so pronounce the verdict without other hesitation than that cautious consideration demanded in the execution of all great and responsible duties. Of course, if the proofs are inadequate, you will as unhesitatingly acquit the prisoner. The Government of the United States simply asks that the public laws shall be faithfully executed. It seeks not victims; it demands not innocent blood. But it does ask, that the blood of an unoffending citizen shall not be shed with impunity on the soil of Pennsylvania, and under the shelter of the laws of the Union; that those laws shall not remain a lifeless letter on the Statute Book, but be vindicated and maintained, and that the promises of the Constitution shall be kept with every member of the confederacy, in the spirit and in the truth, with which that instrument came to us from the great Fathers of the Revolution.

SPEECH OF JOHN. W. ASHMEAD, IN THE CASE OF THE PEOPLE VS. JAMES STEPHENS, INDICTED FOR MURDER, IN THE COURT OF OYER AND TERMINER, FOR THE CITY AND COUNTY OF NEW YORK.

Delivered March 25, 1859.

SPEECH.

May it Please the Court —

It is now, gentlemen of the jury, my province to address you, and submit the last remarks which will be made, on behalf of the prisoner, in this interesting case. The simple fact, that the issue you are sworn to determine, involves the life of a human being, imparts to it an absorbing interest, and requires, what I am satisfied it will receive, your most anxious, scrupulous and careful attention. It is a case of *blood;* in which the accusation made by the government is directed against the life of the prisoner, and Providence, in his inscrutable wisdom has decreed, that you are to decide whether it shall be brought to a violent termination. It is a situation of terrible and awful responsibility, and demands for its exercise, the most patient investigation and careful consideration. The nature of the charge, and the consequences it involves, renders this admonition particularly necessary. A great English judge declared, when presiding in a capital case, that he was *God's* steward of the party's blood, and would have to give a strict account for every drop. If the position of the judge be so very responsible, how much 4 more so is the duty which the law has devolved upon you; for, it is enhanced by the additional consideration, that the *fiat* of life or death is to proceed from your lips, and that when you have rendered your verdict, it cannot be recalled. It becomes from thenceforth an unalterable and imperishable record. These remarks are made, gentlemen, that we may fully comprehend the serious nature of the employment in which we are engaged, and that you may not, with the materials you have before you, leap in the dark to the conclusion of guilt. My trust is, that Heaven will inspire you with calm, steady and reflecting minds, so that the verdict you may give, shall

be such “that you may look to *God* as well as to *man* when you pronounce it,” and that it may minister consolation in that “hour when the hand of death presses heavily on the human heart.”

Having spoken of the solemnity of the position you occupy, I desire you, gentlemen, now to understand, that the counsel for the prisoner, are also conscious of the vast responsibility that rests upon them. They are overwhelmed with the magnitude of the trust confided to their keeping, and which the partiality of the prisoner has imposed upon them. It is not an affectation of a sensibility which is not excited, nor of a duty which is not felt Our convictions are, that the prisoner is wholly innocent of the crime alleged against him, and that there is nothing in the accusing testimony which in any respect brings home to him the charge of guilt. On the contrary, all the evidence in the cause; is a conclusive demonstration of his innocence; and our anxiety is occasioned by the apprehension, 5 that we may possibly, either through forgetfulness or inadvertency, fail to marshal all the facts and circumstances in proof, that in our opinion, point irresistably to this conclusion. This we shall endeavor to show, as we progress in our argument, by an address to your *reason,* and not to your *passions,* for, in respect to the accusing testimony, as already said, the prisoner is unmoved and unaffected by it, and stands, like Mount Atlas—

“When storms and tempests thunder on his brow, And oceans break their billows at his feet.”

Another consideration, gentlemen of the Jury, ought to be adverted to, in this connection, before I come to state the precise,charge made against the prisoner, and the nature of the proofs presented in its support. I allude to the means of preparation for trial, which were possessed by the respective parties, and have been employed in this case. On the part of the people, the whole power and resources of the state have been used, and an expense has been incurred, for a single trial, which will be found beyond all precedent either in this, or any other state of the union. Not merely days and weeks, but long months have been most laboriously, and, I might add, almost exclusively occupied by a chemist

of deservedly high professional skill and reputation. This chemist has had surgeons to assist in the dissection of the body of the deceased, and other assistants to aid him in the experiments and analysis which he made of her remains. All his processes of investigation have been minutely described, and its results stated, with marked ability, and yet, what has it all established, so far as it respects the 6 question of the guilt or innocence of the defendant of the crime imputed to him? Literally nothing, as I will hereafter make manifest to you. Indeed, so far as the great question is concerned upon which you are to pass, all the analysis has been of little practical value, and may be likened, to use the figure of the poet, to “Buckets dropt in empty wells, And growing old with drawing nothing up.”

The opportunities of the prisoner for preparation have been exceedingly limited, when contrasted with those made by the prosecution. He has been for months immured within the walls of a prison. His condition in life is humble, and Providence has blessed him with but limited pecuniary resources. Hence, he possessed no ability to procure the services of chemists and surgeons, and could have no analysis or experiments made on his part separate from those made by the prosecution; and, besides, the remains of the deceased were retained in the exclusive care and keeping of the persons employed by the prosecution. I allude to this, simply to show, that our friends, on the other side, have had all these things their own way, and that if there be any defect or omission in the analysis, they are exclusively responsible for it and not us. It would have been more candid, however, to have handed over to any competent and responsible chemist, whom the prisoner might have selected, a portion of the remains for distinct analysis, and then, the results of the chemists could have been compared. This would, probably, have been more satisfactory. Besides, the prisoner might have been informed, by the officers of the government, 7 of the analysis that had been progressing since the finding of the coroner's jury, and the sort of processes and tests that were used, so that these matters could have been submitted to other chemists to examine, and the results also reported to this jury. This was not deemed necessary by the District Attorney, who prosecuted his inquiries altogether in secret, and we are not here to make any complaints respecting it. What has

been ascertained by the medical testimony, and proved by the other witnesses for the government has been submitted to you, and the whole of it taken together, makes up the accusing testimony. This you have attentively heard. *Audi alteram partem:* a maxim so important, that an English judge took occasion to remark to a jury, it was so sacred an axiom of justice, that it was inscribed upon the walls of many of the courts, that it might be kept in perpetual remembrance.

I might, in this connection, not improperly allude to the manner in which this prosecution has been conducted. It has been brought into this court room, and presented to you in a way wholly different from that in which criminal trials have been heretofore carried on. It was opened by the District Attorney with an air of exultation that it was a case in which there must be a verdict of guilty, and he thanked Heaven, that there could be no middle or compromise ground, as he said, had occurred in other cases, which had been recently tried. What public prosecutor ever before thanked God that he had full proof of the guilt of a prisoner, and how strikingly does such language contrast with the humanity of the common law, whose 8 forms indited the petition, “God send the prisoner a speedy deliverance.” One would have supposed, that if there was to be an exhibition of joy and thankfulness on his part, it would arise from the fact, that Providence would so order it, that the innocence of the prisoner might become apparent, and that the law, would return him to the bosom of his family and his friends, from whom he has been so long and so painfully separated. It is the first time, in the course of not a short experience, that I have heard such cause for thankfulness openly stated by a District Attorney, and for the credit of the administration of the criminal law, I trust it may be the last.

Permit me, gentlemen, to make another observation upon the manner in which this prosecution has been conducted, as it also manifests the partisan spirit of the proceeding. I allude to the deprecation made by the District Attorney of verdicts rendered in other cases, which he has called compromise verdicts, and which were alluded to for the purpose of impressing your minds with the conviction that these verdicts were improper. He undertook to condemn the judicial proceedings in these cases, of which he could have

no personal knowledge, thus seeking to prejudice you, in advance of the evidence to be delivered in the cause, showing him to be, in the language of Shakspeare, “Most ignorant of what he's most assured.” Besides, the verdicts alluded to were not condemned by the judges before whom the causes were tried, and they were satisfactory to the juries by whom they were rendered. What right has the public prosecutor to make any reference to them, and what have they to do with the matter of inquiry before you? We should carefully exclude from our attention all outside considerations, and fix our minds exclusively on the solemn issue we are here to determine, viz: did James Stephens poison his wife? I beg you, therefore, to consider this question, and this alone, and determine it solely upon the evidence in the cause, regardless of every thing else.

I cannot avoid here, expressing my regret, that the District Attorney should, in other respects, have taken advantage of his position, to do what I conceive was cruel and unjust, and for which no proper excuse can ever be given. He has dared to say to this jury, that if they will find the prisoner guilty of murder, he will indict and convict four of the defendant's witnesses, (the Hannah's)of perjury, on account of their testimony given in this cause. Such language, and such a threat, I believe never fell from the lips of a prosecuting officer before, in any case, much less a capital one, and it is a remark that should receive public reprobation. His menaces can have no influence upon you, and although he is high in official position, he is not beyond the reach of public opinion, and to that high tribunal he is fully amenable. Let him carry his threat into execution if he please, and let him contemplate and enjoy the consequences of his acts with complacency, if he can! He cares not how many hearts may be broken by his conduct, nor what desolation his proceedings may carry in their train. It is a struggle for victory, and not for justice, and it does appear to me, that the unfortunate defendant 10 upon trial, is not pursued as a criminal, but is hunted down as a victim. See how unequally the scales of justice have been held in this ease, and what impartial man can approve it? Has not the District Attorney himself told you, (although it was not in evidence in the cause,) that the Grand Jury had dismissed the complaint which the prisoner made against Robert Bell, for his

attempt to assassinate him on the evening of September 14, 1858? And how was this accomplished? By a most illegal aud improper act. He kept the prisoner locked within the four walls of a prison, and then sent the charge against Robert Bell to the Grand Jury, and, in that way, had it acted on when he knew the prosecutor could not be present to testify, and tell his story to the jury. But, worse than this was done! Robert Bell himself was sent to the Grand Jury, and permitted to testify, when he could not be a witness under any circumstances, as he knew nothing of the facts which attended the death of Mrs. Stephens, and did not arrive in this country until nearly a year after her decease. After this statement, need I ask you, gentlemen, with what language I should characterize this proceeding? Was it not unfair and unjust, and may not even handed justice some day commend the ingredients of the poised chalice to his own lips?*

* It is but justice to Mr. Waterbury, the present District Attorney, to state, that the sending Robert Bell as a witness to the Grand Jury, and the dismissal of the complaint made by Stephens against him, occurred during the administration of his immediate predecessor in office, and he cannot be held responsible for it. This circumstance does not, however, alter the fact animadverted on in the text.

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One more preliminary topic, and I have done. It seems to me, that the District Attorney, judging from his acts in this case, has seemed desirous of signalizing his advent into office by a baptism in blood, and so far as has depended on him, he has left no means unemployed to bring about the result. He has not contented himself with the aid of his excellent and efficient assistant in office, (Mr. Sedgwick,) but he has called to his assistance private counsel; and, if gentlemen, having no official responsibility upon them, choose voluntarily to take part in a prosecution for a capital offence, it is for them to consider the propriety of the act, and not for me to question it. I have no objection personally to the gentleman whom he has selected to aid him. He ought not, however, under the circumstances, to have been brought into this cause. He was the private counsel of Robert Bell, and had been employed by him on his arrest by Stephens. Did the District

Attorney need other assistance than what he possessed in his office, he could have called upon the Attorney General, (Hon. Lyman Tremain,) a highly accomplished and learned lawyer, who would have afforded him all the aid he could possibly require. If he chose not to ask for the services of the Attorney General, he had the whole bar from which he could make his selection, and it was improper, to have taken the private counsel of Robert Bell, the man, who, by his own confession, admits he originated the charge of poisoning made against the prisoner.

Again, gentlemen, the District Attorney has not presented the whole of the evidence the People possessed 2 12 to yon, but has picked and culled it, giving you such portions only as would operate against the prisoner, and withholding such parts of it as would make in his favor. He has not conducted it as the minister of the law anxious only for justice, but as an advocate, ambitious simply to carry his cause. He has, in an unusual manner, hung the walls of this court of justice with pictures of all sorts of chemical apparatus, and has endeavored to fill the very atmosphere of the room, in which we sit, with suspicions of guilt. These decorations are upon the walls even while I am speaking, as if you were not to have your attention drawn from them, while the prisoner's counsel are addressing you. How different is all this form of proceeding from the Course pursued by prosecuting counsel in England, and I love to look to that country for just examples of the administration of law; for, from it, we have derived our principles of jurisprudence? In a most interesting article in the October number of the Edinburg Review, being a contrast between the Scotch and English systems of criminal jurisprudence, it is said, “in nothing, perhaps, is a prosecuting counsel in England more cautious, than in not making any statements to the jury, the truth of which he thinks may possibly not be established. Indeed, the humane spirit in which English trials are conducted, is remarkably shown in the fairness and moderation with which the counsel for the prosecution open the case against the prisoner. The tone of his speech is almost judicial; avoiding all exaggeration, cautioning the jury against being influenced by any thing except the evidence before them, and impressing upon them the duty of giving the prisoner the benefit of any reasonable doubt.” I need 13 not ask you,

gentlemen of the jury, to compare this cautious and calm mode of proceeding in England, with that which has been adopted by the District Attorney in this cause. The contrast is striking and obvious. There is one instance, to be sure, where this just course was departed from, but it has been reprobated in English history. I allude to the impeachment of Warren Hastings, and the speeches in which Burke and Sheridan, as managers of the prosecution, assailed him, when on trial in Westminster Hall. The review, to which I have referred, states, in respect to this proceeding, and as an apology for these gentlemen, that neither of them were lawyers, “and that the whole proceedings had more the character of a political and party struggle, than a judicial inquiry.” Would that I could make the same apology for the course adopted by the prosecution in this case, that the Reviewer has made, in the instance referred to, but I cannot, for the gentlemen conducting it, are at least lawyers by degree!

Now, gentlemen, what is the *charge* made against this defendant? It is *murder* —nay, it is more—it is a wicked and deliberate murder, and the subject of that murder, is the *wife* of the prisoner, and the *mother* of his child. That child, so innocent, lovely and interesting, you have seen, and now see, in this court room, and it is the alone tie that links the affection of the prisoner to this world; otherwise, considering what he has already endured, he would gladly escape by death, from the malice and injustice of his accusers, and join her, whose last parting word to him on earth, breathed the request, that he would meet her in that Heaven, to 14 which she trusted, through faith in her Saviour, she was going. It is a melancholy feature in this case, that that interesting child, thus clinging to her father as all of earth that now remains to her, is in no respect conscious of the dreadful interest that both she and that father have, in the sad drama, which is now enacting before you. May God grant, that you may fully comprehend its dreadful import, and realize the fact, that your verdict may not only consign that father to an ignominious death upon the scaffold, but that it may extend further, and consign his infant child to that most dreadful of all human conditions, an orphanage that comes not from the hand of Providence, but comes before its time, inflicted and produced by the verdict you may render. In view of

these awful consequences, I trust, you will at least hesitate, before you impress upon its innocent forehead, a mark more indelible than that of Cain, which shall brand her, through her whole future existence, as the Murderer's Daughter.

Again, the murder charged against the prisoner, is said to have been done by means of poison. Of all kinds of murder, that by *poison* is the most dreadful, as it takes its victim when unguarded, and affords him no opportunity of defending himself. Hence, when administered by the hand of a husband to his wife, one from whom assistance and comfort might naturally be looked for, it is an offence of the deepest malignity. In England, poisoning was once made treason, as may be seen from the trial of Richard Weston, charged with the murder of Sir Thomas Overbury in 1616. The act of Parliament, 22 H. 8, cap. 9, which 15 made it treason, provided that wilful poisoners should be boiled to death, and one Richard Rowse, who had poisoned a man and woman, and was convicted of the offence, actually suffered that punishment. There are very many interesting cases of murder, by means of poison, reported in the books, which it would be curious to examine, did time permit. It is always, so far as I am able to ascertain from examination, a *secret* offence. It was so, in the ease of Solomon Le Roche, a judge in the time of Edward I., and so heinous an offence was it then considered to poison a judge, that a person who committed the act was not allowed the sanctuary of the church, which was permitted to other offenders. It was also administered secretly in the case of the Emperor Henry of Luxemburgh, who was poisoned in the *sacrament,* and in the case of Pope Victor, who was poisoned in the *chalice.* Hereafter, I will apply the principle thus stated, that poisoning is a *secret* offence, and contrast it with the evidence produced against the prisoner.

Having thus, gentlemen of the jury, stated to you the nature of the charge, let us next consider against whom it is made. It is alleged, that the prisoner at the bar, purposely caused the death of his wife, by administering to her laudanum and arsenic in her food and medicine. He has been, indeed, for many years, ever since his arrival in the United States, a resident of your city, and has, during that long period of eight or nine years, assiduously labored in the establishment of Mr. Stephenson, and enjoyed the confidence and respect

of his employer. His occupation has been 16 humble, but honorable, which constitutes, in a single line, “The short and simple annals of the poor.”

His whole life, so far as we have knowledge, has been passed without stain, and no blemish of any description rests upon it. Until the crime charged in the present indictment was preferred against him, he stood above reproach. The integrity of his character has been fully proved by the witnesses who testified on this subject, and the District Attorney has frankly avowed, he does not design to impeach it. His profession of religion was pure and sincere, and he did not assume the livery of Heaven, the more effectually to serve the Devil. So excellent a character, so long and purely maintained, ought, in the extremity of his need, to be a shield and buckler to him, when assailed by testimony, which, to say the least, is both suspicious and malignant, and of a nature, that I trust in GOD, for the sake of our common humanity, may not often be brought into a court of justice hereafter, to swear away the life of a fellow mortal.

Let us look, gentlemen, at the question of character, and the effect it ought to have, in a legal point of view upon your judgment in this case. Its force is frequently misunderstood and misapplied by judges, and they often fail to state its value as forcibly and as fully to juries as they should. On this point, I desire to be clearly understood. A learned judge, in another state, said the law esteemed good character of little value where the crime charged was of a high and atrocious grade, and that it was chiefly of weight 17 where the offence alleged was a misdemeanor or an offence of low degree. This doctrine has been repudiated by the Court of Appeals in this state, in a case of murder, and a judgment of conviction reversed, because the judge so stated the law to the jury. His Honor, who presides on this trial, participated in that decision, and is entitled to a share of the credit that flows from so just a ruling. I therefore state to you, that the law of this commonwealth is, that just in proportion to the enormity of the crime charged in the indictment, is the value of good character, and that in proportion as the offence rises in the scale, in the same ratio

does the importance of good character rise with it, and the probability be increased, that the person charged with the crime did *not* commit it.

There is another error, gentlemen into which most judges fall, when charging juries in criminal cases upon this question of good character, which is also not the law. They frequently say, that it is only to be considered by a jury as important in a doubtful ease, but that in other cases, it has no value whatever in judicial proceedings. This is altogether a misconception of the rule, and is against reason and philosophy. Its effect would be to render good Character of no value in any case; for, if the cause were clear without it, good character in a prisoner, would not be required, and, if it were doubtful, the judge would instruct the jury to acquit on account of that doubt, whether good character had been proven or not. Hence, for a judge to tell a jury that good Character is only of value in doubtful causes, is a simple absurdity, because, in such instances it is not required. The true rule is, and so 18 the law has been held in the Court of Appeals, in the case to which I have already alluded, that where there is no doubt upon the evidence in the cause, simply in itself considered, or where the evidence slightly preponderates against the accused, good character will, of itself, *create* a doubt, where none existed before, and should produce an acquittal.

These considerations, gentlemen, I trust, will have their appropriate influence upon you, and you will give to them the consideration to which they are fairly entitled. The good character of the prisoner should be a refutation of all the matters of mere suspicion which have been introduced into the case, and should make you cautiously hesitate in weighing the evidence apparently against him. You should start out in your inquiries with the presumption of law, which is in favor of innocence, and that presumption should be strengthened by the positive evidence of his good character. It is against all reason, and philosophy, that a man should at once, and by a single bound become the greatest of villians, and this prisoner is entitled to the benefit of the maxim. The declension from virtue to vice is slow and gradual, and it is only when some sudden and overpowering

temptation overtakes a man, that he commits some dreadful crime, and, in that way, falls, “Like Lucifer, never to rise again.”

This matter of good character is, therefore, an essential point in this investigation, and you should look to the respectability and amount of evidence by which it is sustained, and ask your own honest hearts, 19 whether you can say, that a man possessing such a character, is a wicked and deliberate murderer, who deserves, by your verdict, to suffer a shameful and ignominious death? Recollect, that to support a charge of such an odious nature, the law requires the most incontrovertible proof, and the written and common law warrant you in demanding it. It is a matter of astonishment to me, that men can keep the natural color of their faces, when they ask for human life upon the evidence in this case, even if the prisoner had offered no defence. I am not, to use the language of a great English advocate, “stiff in my opinions, but before you disregard them, they must show some direct monument of justice against them, and unless you hear me refuted by the clearest and most irrefragable proof, and not by vague conjecture, if you wish to sleep in peace, *follow me.* ”

I might, in this connection, if it were necessary to add anything further on this subject, (I mean the presumption of innocence,) state, that Bentham, (3 Judicial Evidence, 187, 188,) says, “that the natural relation existing between the parties of husband and wife; furnishes, of itself, a general presumption of character, which repels, in advance, any such suspicion.” Domat, in his Civil Law, Book 3, title 6, section 4, article 7, also states, “that it is a natural presumption of law, that the relation of husband and wife constitute restraining motives of the very strongest kind, and it is supposed, that men are influenced by them, and act according to their dictates, and not in violation of them.” That the relation of husband and wife does not always restrain persons in that relation from acts 3 20 of violence toward each other is certain, but, it is still true, that the general rule is, as the authorities I have quoted state, and when violated, it is an exception, and requires a *motive* sufficiently adequate to induce it.

This brings me, gentlemen, to another point in this discussion, which I must here consider, before I proceed to analyze the evidence, and show you what it establishes. I mean the subject of *motive,* a great and important question, which will enter largely into your deliberations. It is a question of vast consequence in this case, and the dependency of *motive* upon moral character, is everywhere recognized in judicial proceedings. The absence of it, furnishes, in all cases, a strong presumption of innocence. If a motive be shown, then its *intrinsic quality* or *impulsive* force is next to be considered. It is always a strong argument against the adequacy of an assigned motive to have induced the commission of a crime charged, that there is a great disproportion intrinsically existing between it and the offence. Now, what is the motive which the prosecution allege prompted the prisoner to take the life of his wife? So far as it was stated in the argument of the District Attorney, it was two-fold: *first,* to get rid of his wife, who was older than himself; and *second,* his wish to marry Sophia Bell, to whom it was said, he was pointed in his attentions during the life-time of his wife, and whom he proposed to marry soon after her death. These statements, in themselves, are utterly untrue, and so far as the prisoner is concerned, he would rather walk to the scaffold, and suffer all the ignominy which a death upon it would entail upon him and his posterity, than enter into a matrimonial 21 alliance with that female. Still, as these motives are asserted to have moved the prisoner to commit the crime charged, we will examine the evidence in respect to them, and ascertain how far they may be considered adequate to have prompted to such an act, supposing them to be true in point of fact. I should add, it is also said, by the Misses Bell's, that the most friendly relations did not subsist between the prisoner and his wife. All these matters will be considered together, and the weight to which they are entitled, as a motive for getting rid of her, will now be considered.

What is the testimony upon these points? It is derived from the three witnesses who support the prosecution, and who, in my judgment, cannot be relied or. or credited by you. I mean Fanny and Sophia Bell, and Samuel Cardwell, the latter, a gentleman who sticketh to Sophia, “closer than a brother.” That the story told by Fanny and Sophia Bell, in

all its material features, is an utter and entire fabrication, I do most solemnly believe, and this fact will become apparent as we advance in our argument. It is the most deliberate conspiracy to take away life, I have ever known, and arises from *two* motives; *first,* that of revenge towards Stephens because he would not tolerate these females in his house, after he became aware of their conduct, and because Sophia Bell supposed he was the author of the anonymous letter to Cardwell, which exposed to him her wantonness; and *second,* because it was necessary to screen Robert Bell, (their brother,) from the legal consequences of his attempt to assassinate the prisoner, and for which, at the time, he was under arrest.

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Permit me here to remark, that in respect to both Fanny and Sophia Bell, I regret that I am compelled to speak in language which I would rather avoid, did truth permit, and I beseech you, listen with caution, and watch the testimony of witnesses who seek to swear away the life of your fellow citizen. “Out of thine own mouth will I condemn thee,” was said in the bitterness of reproach, and may be applied, with marked significance, to these two females. Under other circumstances, had they preserved the purity of their nature, they might have been objects lovely in the eye of God, and estimable in the sight of man; but, when they so far forgot the proprieties of their sex, as to convert the home of the prisoner, which was the abode of piety, into a house of pollution, they commenced the downward path in their career. The rebukes their conduct received from the prisoner, only increased their animosity towards him, and at last, they became utterly reckless of all consequences. The restraints both of God and man soon became insufficient to check them, until, in the end, they could contemplate, with complacency, the dreadful deed of blood, they desired to consummate. Thank God there is a juror's oath between the prisoner and these witnesses, and a Providence above us, “in whose hands are the issues of life,” and who will show you, I trust, that it is not necessary, in order to oblige them, that you should be stained with blood!

Now, gentlemen of the jury, all the causes stated by the Bell girls, as motives to induce the prisoner to poison his wife, are not true, in point of fact, and it is a most singular circumstance, that wherever their testimony 23 is compared with the other witnesses in the cause, it is flatly and uniformly contradicted, and not supported in a solitary instance. Sophia's friend, Cardwell, does, indeed, come to their rescue on one occasion; for he, together with these girls, swear to the fact, that Stephens ' relations with his wife were unfriendly, and that his conduct towards her was unkind. I rejoice to say, that the whole body of the testimony in the cause, is a refutation of this calumny. You shall hear it from the mouths of more than a dozen witnesses; and it will be apparent, that this fabrication was designed to enable the getters up of this prosecution the more effectually to swear away the life of the prisoner who generously gave them food and shelter in his own humble habitation, when they were strangers and destitute of the means of subsistence. The only evidence that there is in the cause, that hints at unkindness on the part of Stephens towards his wife comes from the Bell girls and Cardwell. They specify particulars. What are they? Sophia states the acts of unkindness as follows: “Prisoner refused taking his wife to any place—spoke to her rough—did not treat her as a husband should a wife—frequently told her to hush up, and all such talk as that. Once when she was standing in the hall, they were talking rather roughly to each other, and he said he wished she were dead. That this occurred two or three months before her death, but his use of improper language began ten or twelve months before his wife's death. That on two or three occasions he remained out late—said he had had a pleasant time, and had been talking to young ladies. She got angry about it, and he put up his clothes to leave in the morning.” 24 The foregoing are the instances of unkindness given by Sophia. Fanny Bell states the acts of unkindness, seen by her, in this wise. “His conduct towards his wife was not generally what I would expect from a husband. In speaking to her, and taking advice on any subject, he always objected, and said she was not capable. He used harsh expressions to her, such as *hush up—did'nt know—knew better than her—dry up.* At other times he called her a fool and a liar, and said she was telling lies. That on the occasion of Mrs. Stephenson's funeral, prisoner's wife was desirous of attending it and

wished to know whether her husband was not going to wait for her. That he refused to take her, and that she heard a blow in the adjoining room into Which Stephens and his wife had gone. That Mrs. Stephenn called out murder, and that on this occasion, it was, that she received a blow from the prisoner, which caused the black eye." Samuel Cardwell, states Stephens conduct thus: "His common conversation towards his wife was rough and boorish. She was conversing with him on one occasion, very intelligently on business, when the prisoner told her she was not fit to sell matches. At another time, he spoke very roughly, and said to her that she knew nothing about what she was talking. There was nothing more than what I have stated, but I thought his manner unkind."

Now, gentlemen, what does this testimony prove, even supposing it to be true, which I most explicitly deny? It is against all the other evidence in the case, but still, I will consider its effect. That portion which relates to the black eye, and the manner in which it 25 was received, as stated by Sophia, is wholly false; for, we have Mrs. Stephens statement on the subject made to Mrs. Fee, one of the witnesses for the prosecution. She told her, that she had been painting a chest in her room, that her child asked for a drink in the night, and she rose from her bed to procure it for her; that the lid of the chest was left open, and forgeting it, she ran against it, there being no light in the room. This, to be sure, Sophia endeavors to get rid of, by volunteering the remark, that, "it was to conceal the prisoner's villainy that Mrs. Stephens told the story about the chest." This remark, besides imputing a falsehood to her aunt, shows the deep malignity of feeling entertained by Sophia towards her uncle, when she could volunteer so bitter a speech, under the serious circumstances, in which he is placed. It, of itself, is a reason why little reliance can be placed upon her testimony, and is so stated by MacNally, in his Treaties on Evidence, vol. 1 page 2. He says, "the credit of a witness may be materially affected, or wholly destroyed, by his obtruding his owu sentiments and opinions; and, unless his testimony is supported by clear and unsuspicious collateral proof of the facts charged on the prisoner, by the indictment, *doubt* must arise in the minds of the jurors; and by the humanity of the law, when doubt is created an acquittal ought to be the consequence."

What do all these alleged instances of unkindness on the part of Mr. Stephens amount to, taking them to be true? Are they adequate motives to induce a man to poison his wife? I submit they are not, and it only shows how anxious these witnesses are, to 26 make out a *motive,* when they gather up all the expressions of one who may be passionate by nature, hastily dropt by him in his house. Little family affairs may have happened, in which the prisoner may not, possibly, have spoken as he ought. Great pains, it seems, have been taken to recollect every word he uttered at different times, and to exaggerate what he did say, and apply them painfully to him on this trying occasion. Gentlemen, what man among us could be tried by such a standard, and found to be altogether free from fault? How often in moments of passion, and under the influence of excitement, do the best of us drop hasty and unguarded expressions, which we regret, and would gladly recall, the instant they are uttered? This occurs, sometimes, in the cases of our dearest and best friends—our wives and our children—and if they are all to be treasured up and remembered against us, which of us could escape the condemnation that would follow. But, this is not the course of divine justice towards men, and should not be the course adopted by you. If the general tenor of a man's life be well directed, though there may be slight faults and errors, it will be found, that “many of them have been grafted by human imperfection upon the best and kindest of our affections.” To use the elegant and classic language of Erskine, “if its general tenor be right, he may walk through the shadows of death, with all his faults about him with as much cheerfulness as in the common paths of life, because he knows, that instead of a stern accuser to expose before the author of his nature those frail passages, which checker the volume of the highest and best spent life, his mercy will obscure them from the eye 27 of his purity, and our repentance blot them out forever.” Hence, the law, in humble imitation of these Divine principles, has made it a well settled axiom in criminal jurisprudence, that where the acts or language of men, admit equally of opposite interpretations, that construction shall be adopted, which is most favorable to innocence.

I will allude to another alleged motive of Stephens to poison his wife, as sworn to by the Bell girls, and will show you that it also is untrue. I refer to the statement that the prisoner

was desirous of marrying Sophia, and was pointed and particular in his attentions to her, and had actually made her a proposition of marriage. The facts in the case show the truth to be otherwise; for, the proof is clear, that it was Sophia who constantly followed him after his wife's death, and availed herself of every opportunity to be in his company. Mr. John Stephenson states, that her conduct, in this respect, was conspicuous, and he frequently observed it. All this too, be it remembered, was after the death of the prisoner's wife. He adds, that when in church, she would carry on telegraphic communications with him, by means of signals which he seemed to comprehend, and would loiter about the door of the church waiting for him. So, at the Sunday School, he adds, when there was abundance of room on the female side, she would go to the men's, where Stephens was, and sit beside him. This, in a Methodist Church, was a marked impropriety. Now, I need not tell you who John Stephenson is, nor how long he has lived in this community as a highly honorable and respected citizen. His character is a 4 28 guarantee for the truth of every word that fell from his lips, and his testimony should outweigh all that was said by Fanny and Sophia Bell in opposition to it. Besides, these females have the deepest personal interest in the result of this cause, and the strongest possible motives to mistate and mislead. John Stephenson has, on the contrary, no reason whatever to deviate from the truth. Besides, the evidence of Mr. Stephenson is confirmed by the testimony of John Pullman, John Gaddes and Frederick Smith. These three gentlemen testify, that Sophia, after the death of Mrs. Stephens, was constantly following the prisoner to his work shop, and her conduct towards him was so marked, that it attracted their attention. Surely, gentlemen, you will not permit the honest and consistent testimony of these four respectable witnesses to be rendered nugatory by the statements made by these Bell girls. To do so, would be to violate all the rules of reason and justice.

I have thus shown you, gentlemen of the jury, I trust conclusively, that it is not true, that the prisoner ever treated his wife unkindly, or that he ever desired a matrimonial engagement with Sophia Bell. It is certain, if you credit the testimony, that Sophia never left any opportunity unimproved to put herself in his way. What is there that can overturn such

proof as this? Surely, not the statements of these females, whom the prosecution have described as *ladies,* and, in respect to whom, the writing on the wall of Belshazzar's palace was not more significant, than is the evidence in this case in respect to them. Knox's sleep on Sophia's bed, and her visit to Stephens ' room, 29 speak on this point, with “most miraculous organ.” It is certain, both Fanny and Sophia Bell have stated, under oath, that they were without employment since May last, and judging from the appearance they made on the stand, they are “like the lillies of the field, they toll not, neither do they spin, and yet Solomon, in all his glory was not arrayed like one of these.” I have nothing to say of them, or about them, except that I cannot join with the District Attorney in commending either their purity or their conduct, and when I seek for models of female excellence, I shall expect to find them in some other direction, and not among such as “humble themselves that they may be exalted.” Hence, the plan and rigid rules of justice require, that you should yield your assent to this testimony. How absurd the idea, that the prisoner could ever have seriously preferred the society of Sophia Bell to the companionship of his most excellent wife. Have you not heard the witnesses speak of the deceased Mrs. Stephens, and the excellencies of her character? Her gentleness—her amiability— her meekness, and with what devotion she gave herself to her domestic duties! Have you not also heard of her self-denying sacrifices, and the love she bore her husband? The flame of her piety, burned brighter and brighter, as the scenes of earth were fading from her view, and her faith was taking firm hold of the glories and realities of eternity! When her lamp of life had nearly burned out, and its last rays were flickering in its socket, she gathered her husband into her arms—pressed him closely to her bosom—kissed him—and in gentle accents, bade him meet her in Heaven. Was this chamber of death, the place for hypocricy? Was its stillness and solemnity 30 the place for deceit? Would distrust of the husband, (as hinted at by Fanny Bell,) and alienation of the affections of the husband from his dying wife, be evidenced in this manner? Was not the solemn parting between this affectionate couple, the manifest sundering of a tie that had gently clasped them together during all the period of their married relation; Land will you permit the, dark and malicious insinuation which has been made, to bias your judgments in considering the prisoner's case? Know

you not, that “A death bed's a detector of the heart; Here tired dissimulation drops her mask,” and, if there be an honest hour vouchsafed to man on earth, it is at that period when “the shades of death with gradual steps steal on.” I will not attempt to describe, for I cannot, the death bed scene:—

“The death bed of the just! is yet undrawn By mortal hand; it merits a divine, Angels should paint it, angels ever there, There on a post of honor and of joy.”

I will add, gentlemen, that Mr. Davis, the class leader in the Twenty-Seventh Street Methodist Church, of which Mrs. Stephens was a member, and who was present in her chamber on the night of her death, says that the parting between the prisoner and his wife “was very affecting,” and that she said to him, “Dear James, how much I love you.” Mr. Armsrong, another class leader in the same church, declares, that “she called him her dear husband.” These two last witnesses, as well as Susan and Maria Hannah, agree, that the dying woman embraced the prisoner in her arms, in the most affectionate manner, and said to 31 him, “meet me in Heaven.” Yet the language of this chamber of death is misrepresented by both Sophia and Fanny Bell, who swear that she did not say, *meet* me in heaven, but “prepare” to meet me in heaven. Four witnesses contradict these girls, viz: George Davis, Francis Armstrong, Susan Hannah and Maria Hannah, and you should not, therefore, credit them, particularly when i will show you, before I am through, that the Bell girls are every where contradicted by the other witnesses in the cause.— *Falsus in uno, falsus in omnibus* They swear to too much, and have too deep a personal interest in the result of this controversy to be credited against disinterested testimony, such as that of George Davis, and Francis Armstrong; and, besides, they seek to impress upon your minds the belief, that the flowers will not spring upon the pure and unpolluted grave of Mrs. Stephens, unless you moisten and nourish them with the blood of her husband.

But, gentlemen of the jury, there is other evidence which shows conclusively that instead of the prisoner wishing to marry Sophia Bell, he was only anxious that she should leave his house, and provide for herself another home. In order to accomplish his desire, in

this particular, he proposed breaking up housekeeping, and, to counteract his purpose, Sophia Bell visited Mrs. Hannah, the sister of the prisoner, and prevailed on her to see her brother, and dissuade him from his purpose, stating, that if he did so, Sophia and Fanny Bell would be left without a home. Mrs. Hannah, in order to gratify Sophia, undertook to expostulate with her brother, and she succeeded in 32 persuading him, for the sake of these females, to change his purpose. There are five witnesses who mention the prisoner's strong desire to have these girls leave his house, and they speak of his actually requesting them to quit his premises. These witnesses are George Davis, Susan Hannah, Maria Hannah, Isabella Bennet, and John Bennett. Surely, if the prisoner had any desire to marry Sophia Bell, he would not have sought to banish her from his house and presence, but would, on the contrary, have striven to keep her near him, and, if possible, under his own roof. Instead of doing so, he wished to free himself from her society, and she appears to have been, in his estimation, most lovely when at a distance. The poet says, “that distance lends enchantment to the view,” but no one ever supposed that it was so in the case of a lover and his mistress. Does not the proof show, that the prisoner had no desire to marry Sophia Bell, but, that on the Contrary, he endeavored to escape from her presence? If this be so, then the assigned motive for the prisoner to murder his wife, so that he might find another wife in Sophia Bell, is without foundation in fact.

There remains but one other reason, that has been suggested as a motive on the part of the prisoner to poison his wife, which I will now, very briefly consider. It is the alleged fact, that the deceased was older than the prisoner, and, that on that account, he was desirious of ridding himself of her. It is true, that Mrs. Stephens was older than her husband, but I submit to you, most respectfully, that that circumstance furnishes neither a reason nor a presumption 33 that it would impel him to take her life. It cannot be considered an adequate motive by you. One of the warmest attachments I have ever known existed in a case where the wife was nine years older than her husband. A very remarkable instance of great affection subsisting between parties, where there was a marked disparity in age, is that of Napoleon and Josephine. The latter was about six

years older than the former. I suppose, that no human beings ever lived, who were more devotedly attached to each other. Josephine, died, hardly four weeks after the illustrious exile had landed at Elba. When dying, she held in her hand the minature of Napoleon, and gazing upon it, uttered her last and memorable words, “Isle of Elba, Napoleon. ” It is a singular circumstance, that the last words that fell from the lips of the dying Emperor, were “France, the Army, Josephine. ” It is true, that reasons of state led the Emperor to divorce himself from Josephine, and unite himself with Maria Lousia, but it arose from his belief that it was necessary for the repose of France, that there should be an heir to the throne. He sacrificed his love to ambition, or more properly speaking, yielded it to what he considered the interests of the French people. Every act of his life, and his last words in death, proved his attachment to Josephine. Now, where is the instance, shown to have existed anywhere, in which a man was impelled to murder his wife, from the fact that she was his senior in years? No such case can be found—it is not written in the books, and I am sure, you will pause before you find it sufficient in the case on trial. I dismiss the suggestion 34 from further consideration, and will not occupy your time longer with its discussion.

Having considered the utter absence of all motive on the part of the prisoner, to commit the offence charged in the indictment, I will proceed to show you how this prosecution originated, and why it is important to Fanny and Sophia Bell, that it should be successfully carried through. The circumstances attending its origin, to use the mildest language, mark it as suspicious. Mrs. Spephens died on the twenty-third day of September, 1857, and on the fourteenth day of September, 1858, Robert Bell, (the brother of Fanny and Sophia) was arrested on the criminal charge of having attempted the life of the prisoner. You recollect, that he went to the shop of Mr. Stephenson, where the prisoner was employed, and deliberately discharged the contents of a pistol at his head. The attempt failed of its intended purpose, and the prisoner escaped without injury. Robert Bell instantly fled, was pursued by an officer, arrested and taken to the Station House, where he charged the prisoner with having poisoner his wife. He did not state that arsenic had been administered

to her, and, indeed, did not describe the kind of poison that had been used, and, it is certain, that the idea of arsenic, according to the evidence, was first mentioned in the office of Mr. Schaffer. The latter named gentleman, had been retained as private counsel for Robert Bell, and after his arrest, a Telegraphic Dispatch was sent to Samuel Cardwell, who was absent in Orange county with Sophia, and, on its receipt, Cardwell came to the city, and entered bail for Bell. Subsequently, 35 Fanny, Sophia, Robert Bell, and a Physician, whose name has not been disclosed on the trial, assembled at the office of Mr. Schaffer, where the girls detailed the symptoms of their aunt during her last illness. This physician, after hearing them stated, said, the “symptoms seemed to him, very much like arsenic.” What I have now stated, is the literal history of the origin of this prosecution. For one whole year, Mrs. Stephens slumbered in her tomb, no one expecting or dreaming that her narrow and quiet charnel house would ever be invaded by human hands, or her remains called from their hiding place, “till the last trump shall break her sullen sleep.”

At this point, gentlemen of the jury, let me ask you, whether you do not discover a strong motive on the part of Fanny and Sophia Bell, to fabricate the charge against the prisoner? Do you believe it to be an honest accusation preferred in good faith? Why did these females keep within their breasts the knowledge of the secret, until something became necessary on. their part, to save their brother from a felon's doom? Do you believe, that if Stephens really had poisoned his wife, and they were aware of the fact, and particularly if Sophia were desired by her dying aunt to see to it when she was dead, (as she has more than insinuated) the charge would have slumbered for so long a period? In the nature of things, it could not be. With what object, then, was it interposed? To save their brother from a condemnation and punishment he richly merited for his gross and cowardly infraction of the law. It had for him, the intended effect. Robert Bell walks the streets, “unwhipt of 5 36 justice,” unmolested by the District Attorney, and commended by the officers of the law. Talk not to me of even handed justice in the administration of the criminal code, when the facts of this case stare us in the face. It is a delusion and a mockery, and you cannot close your eyes to it. Certain it is, the arrest of Robert Bell

originated the complaint against the prisoner, and now, the first is discharged, while admittedly guilty, and the latter is held, upon his questionable testimony. See you not, the motive which suggested this proceeding? Its success is liberty and hope to the attempted assassin, while its failure may unbar the bolts, and open the gates, of the prison house to receive him. Look at these consequences, and then tell me, if you can, which of these parties had the strongest motives to perpetrate a crime, Stephens to poison his wife, or Robert Bell, to charge it upon him, in order to shield himself?

I come now, gentlemen of the jury, to consider the other questions which arise in this case. Was Mrs. Stephens death caused by the administration of poison, and did the prisoner perpetrate the act? These are, after all, the serious issues you are sworn to determine, and you must decide them both in the affirmative, or you cannot return a verdict of guilty. Indeed, if you have a reasonable doubt in respect to them, or either of them, your finding must be in favor of the prisoner. I cannot say what impresssion the testimony adduced by the people has made on your minds, but, so far as I can appreciate its weight, it does not, by any means, establish the fact, that Mrs. Stephens death was occasioned by poison. The evidence on this point is derived from three sources; *first,* the chemical 37 analysis made by Dr. Doremus; *second,* the symptoms of which Mrs. Stephens complained, as detailed by the two physicians who attended her during her illness, and the other persons who conversed with her, and their alleged correspondence with the symptoms produced by arsenical poison, as described by the medical witnesses; and *third,* the proof given by Michael Flynn, that he sold arsenic to the prisoner, on two occasions, while his wife was sick. We will look at these matters separately.

The first point, therefore, for consideration, is the value of the chemical analysis, as an item of proof, I do not desire, in what I propose to say upon this topic, to have it understood, that I do not fully appreciate the great chemical knowledge possessed by Dr. Doremus. He has given his testimony with a fullness, precision, and accuracy of language, that must satisfy you he is thoroughly master of his subject, profound and intricate though it be. He has spared no pains to make his analysis altogether perfect, and I listened

to the many explanations which he gave with the deepest interest. I would not seek to detract anything from his well earned reputation if I could, nor interfere with the promising brightness of his future. I am proud of his attainments, and am gratified to believe that they are destined to reflect honor, not merely upon the city of his nativity, but upon our common country. I declare with great sincerity that I believe Dr. Doremus may yet achieve for America, what Orfila accomplished for France, and impress his genius upon the age in which he lives. If the first surgeon is to be found in the city of New York, why may not the first chemist be found here 38 also? I frankly admit, that I do not believe it possible for mortal man to have made a more careful and thorough analysis of the remains of a human body, to ascertain the presence of arsenic, than was made by this distinguished chemist, in the present case. Its results have been placed before you, and what has been established by it may be summed up in a few words. There was obtained, after dissolving the entire body, viscera, bones, muscular tissues, and in fact, every part, something less than two grains of arsenic, and Dr. Doremus calculates, there was lost in the process of analysation, and in other ways, as much more. This would give us about four grains of arsenic, a quantity, in his judgment sufficiently adequate to have produced death. He does not, to be sure, undertake to swear that the arsenic found in the remains was the cause of death, but he cautiously abtains from expressing any such opinion. One of the difficulties with this analysis, in my mind, is, that the arsenic, according to the books on forensic medicine, where death resulted so soon after the alleged poisoning, as it did in this instance, ought to have been detected in the stomach and intestines, and in quantities sufficient to have indicated it to have been the cause of *death.* It is supposed here, to have been administered in a powder, and I infer it, from the fact, that the yellow and white powder, which Fanny Bell swears she saw the prisoner give his wife, the day preceding her *death,* is alleged to have contained arsenic. Now, according to the authorities, the powder, (if the poison had been taken in that form,) is found generally imbedded between the folds of the mucus membrane, closely adhering to it, in brilliant points, or in white and flaky 39 patches. Yet, it is remarkable, that in this case, no arsenic was found in the stomach of the deceased, and the *post mortem* examination, exhibited no trace of its

having been taken. It is not pretended, by the prosecution, that this was a case of acute poisoning, where death was produced from the administration of a single dose, but, it is treated as if it were a case of chronic poisoning, extending over a period of three weeks, and administered daily in small doses. That Mrs. Stephens death could not have been occasioned by chronic poisoning is manifest, from the pathological appearances of the stomach. Dr. Wood, their own witness, who made the post mortem examination of the body, says there was no redness whatever in the interior coat of the stomach, and no signs of inflammation. If this be so, it is certain, that no case of chronic poisoning from arsenic could exist without the invariable appearances of redness and inflammation of the stomach. This fact, if you credit medical testimony at all, is conclusive against the theory of the prosecution, that Mrs. Stephens died from chronic poisoning.

I have already remarked, gentlemen of the jury, that no arsenic, or the traces of it, were found in the stomach of the deceased, and I do not wish you to suppose, that there can be any doubt on this point. Hence, I prefer giving you the language of Dr. Doremus. He says, “the stomach, which was in a remarkable state of preservation, was found to contain a small quantity of a substance resembling coffee grounds, which, on analysis, yielded no indication of opium or metalic poison.” Now, I confess, I do not pretend to understand 40 the mode of action of poisons; for, it is a physiological question, and I am not qualified to discuss it. I cannot tell, whether the poisonous substance exercises its deleterious action by being absorbed into the blood, or by an immediate or remote action upon the nerves, and I will not undertake to decide it. I suppose, however, it must be conceded, that the poisonous effect of any article is not invariably the same, and that it varies in different persons, and this remark I shall have occasion to apply in another part of my argument. It is certain, however, according to Wharton and Stille; (Medical Jurisprudence, sec. 582,) of admitted authority on questions of Medical Jurisprudence, that, “the most reliable and tolerably constant changes produced by arsenic, are found in the stomach and intestines.” Taylor, also, in his Treatise on Poisons, at page 325, states, “the striking changes produced by arsenic are generally confined to the stomach and intestines.”

Hence, he says, “our attention must *first* be directed to the stomach.” In the present case, there was not only no arsenic found in the stomach, but the post mortem examination gave no indications that it had been taken. Will you, then, under these circumstances, convict the prisoner, when the appearances of the body, after being exhumed and examined, showed no traces of arsenic in the stomach, and when you have the highest authority, that of Taylor, for asserting, “that the striking changes are *generally confined* to the stomach?” Are you willing to disregard the experience of these great authors, who state the general and almost invariable indications of arsenic poisoning on the stomach, and in the absence of what they consider usual and satisfactory evidence, 41 rely upon an analysis which did not find the arsenic where it should have been found, supposing death to have resulted from its administration? I am sure, you cannot. There is no reason, why you should, but strong and imperative reasons why you should not. To hang a man on scientific evidence, when all the other testimony in the cause is weak and inconclusive, would be a monstrous thing. What is science? No man can say that the opinions entertained and believed by him to-day, may not be abandoned to-morrow, and yield in their turn to the discoveries still (o be made. You have been told, in this case, that the French chemist Orfila, (than whom no greater ever lived,) declared and maintained, for many years, that arsenic was a natural constituent of the human body, and it was only after his failure to establish the fact, before a French commission, that he admitted his error and abandoned his theory. If Orfila could be mistaken, why cannot not Dr. Doremus? It is not to be imagined that he has arrived at the end of all knowledge, even in chemical science. It is certain, that if Orfila had testified at one period of his life, he would have sworn that arsenic was a natural constituent of the human frame, and if he had been examined at a later day, his statement would have been directly opposite. So it may be with Dr. Doremus. He may yet discover that some of his processes of analysis are not so conclusive, as he at present deems them,—time and future discoveries may change entirely his impressions. My wish is, gentlemen to treat you fairly, and hence I assert, that no intelligent chemist, either in this country or Europe, would expect you to convict a prisoner upon a chemical analysis of 42 a human body, where the entire corpus was dissolved, and so small a quantity of arsenic

found, as is shown to have been in the viscera in this case. Why, the whole vicera, upon a quantitative analysis, produced not quite one fifth of a grain. That I may be accurate in this particular, let us take the exact language of Dr. Doremus. He states, “a quantitative analysis was made of the arsenic contained in the viscera of the deceased, viz: the heart, the remainder of the lungs, liver and kidneys, with the large and small intestines, the spleen, pancreas, omentum, the bladder and uterus, weighing together seven pounds and three ounces. These yielded twelve-thousandths grains of arsenious acid, equal to about one-fifth of a grain of the arsenic of the shops.” In making this analysis, large quantities of sulphuric and hydro-chloric acids were used, and very many pounds were necessarily concentrated. It is said, these acids were thoroughly tested, and were pure, and that no arsenic, as an impurity, was found. These tests cannot be relied upon, much less be considered sufficient to deprive a human being of his life. Notwithstanding all the care and caution, which is admitted to have been used, arsenic might have been introduced, *ab extra,* in some manner which the chemist himself would be unable to explain. The most eminent toxological writers, have left it upon record, that such evidence ought not to be esteemed conclusive, and they declare they would not censure a jury who should refuse to consider it adequate evidence to convict, stating, that evidence of a much less ambiguous character, has been frequently rejected by a criminal court in England. I will now read to you the authorities, and ask you to consider with me, the 43 whole analysis of the remains of Mrs. Stephens, as of no practical value, in establishing the guilt of the prisoner.

I call your attention, to Taylor on Poisons, page 141, he says, “When but small traces of poison are discovered, and large quantities of materials have been used for its extraction, as in what Dr. Christison properly designates the ‘enthusiastic’ analysis of some modern French medical jurists, it would be unsafe to base any conclusion upon the results. Thus, in some recent French trials, the medical witnesses have not hesitated to boil up and evaporate the whole of the human body with many gallons of water and acids, in large iron cauldrons, and have inferred that the individual died from arsenic because they had detected in his remains, infinitesimal traces of poison! The dramatic effect of these gigantic

researches, was probably never more stikingly displayed than in the well known case of Lafarge. The body of the husband was undergoing evaporation in large iron vessels outside the court, while the wife was on trial for the murder within! The quantity of sulphuric acid, and nitre, which must be used on such occasions, is so great, that there is good reason to suspect the probable introduction of small traces of poison *ab extra.* A jury would undoubtedly, be fully justified in rejecting chemical evidence procured by such means; and in any similar case the witness ought to be called upon to state whether he has previously examined for poison, *equal quantities* of the substances which he employed in the analysis. Evidence of a much less ambiguous character 6 44 has been frequently rejected by a criminal court in England."

I now call your attention to Christison, an author of unquestionably high authority. He says in his Treatise on Poisons, page, 280, that, "It is not likely that such enormous masses of material will ever be operated on again, as those which were made use of in some late French trials and for which great iron pots were found indispensible: because it has been proved that absorbed arsenic is chiefly to be met with in particular organs or secretions, such as the liver and urine. Besides, a false importance has been attached to the enthusiastic analysis of the whole human carcase, with which some French Chemists have been astounding the minds of the scientific world as well as the vulgar, on the occasion of certain late trials for poisoning. I confess I could not find fault with a jury, who might decline to put faith in the evidence of poisoning with arsenic when the analyst, after boiling an entire body, with many gallons of water, in a huge iron cauldron, making use of whole pounds of sulphuric acid, nitric acid, and nitre, and toiling for days and weeks at the process, could do no more than produce minute traces of poison. What man of common sense will believe, that, with such bulky materials and crude apparatus, it is possible to guard to a certainty against the accidental admission of a little arsenic. At all events I am much mistaken if any British jury would condemn a prisoner on such evidence, or any British chemist find fault with them for declining to do so."

The danger of mistake in chemical analysis, and the fearful conquences of relying too confidently upon its supposed results, is shown in a recent publication of Dr. Taylor, being comments published by him on the medical evidence given on the trial of William Palmer for the murder of John Palmer Cook. I read from the London edition, page 3. He says, “Due caution is of course required in drawing inferences from symptoms, but an equal, if not a greater amount of caution, is also demanded in drawing inferences from the results of delicate and refined chemical processes applied to the solids and fluids of the dead body, Is the chemist more certain of the accuracy of the tests employed in such cases than the experienced physician of the symptoms? Take an instance in which the symptoms are so doubtful that they might be assigned to strychnia or disease. The chemist demonstrates, as he says, by certain colors, the presence in the dead body of the fifty thousandth or the twenty thousandth of a grain of poison; one of a sanguine temperament will tell you that, beyond all doubt, it is strychnia; a second Will affirm that the appearance is equivocal; and a third will tell you that he disbelieves altogether that it indicates the presence of the poison. This, as it will be seen hereafter, was very much the state of things in the case of Cook; and it is not at all improbable, from the kind of evidence given at the trial, and the bold reliance placed upon infinitesimal results, that had the chemists for the defence changed places with the chemists for the prosecution, the prisoner would have been chemically convicted by his own witnesses. Is it upon a slender reed like this that the public are to be taught to learn to protect themselves 46 from death by poison? Let it be remembered, that if the physician, as a pathologist or physiologist, may be deceived by symptoms, the chemist may be equally deceived by his tests. He may, and often has, pronounced poison, to be present where it was not; and he has overlooked it where it was present. What is produced as poison from a dead body, may not be poison at all. The varied results of chemical tests and processes may mislead, and often have misled the most experienced men; and there can be no doubt, that an absolute and blind trust in chemistry, as all sufficient to settle a disputed case of death from poison in the affirmative or negative, would lead to the most serious consequences.”

I have read these extracts, gentlemen, from works of unquestionable authority, conceded to be so by the medical witnesses examined in this cause, for the purpose of showing how dangerous it would be for yon to rely implicitly upon the results of chemical analysis. It is certain, to use the language of Taylor, that a blind trust in chemistry, would lead to the most serious consequences. It would be especially perilous to do so in this case, for I am persuaded, that all the collateral facts and circumstances are inconsistent with the guilt of the prisoner. You should not rashly take away the securities of human life, because it cannot be surrounded with too many safe guards. Chemical science is very far from being either perfect or certain, and is liable to be affected by what is called the collateral evidence. The ghost of one man is not to be appeased by the sacrifice of the innocent, and while science will enable you to say that arsenic *may* be present, it will not enable you to say, that what you take for arsenic may 47 not be something else, and that if it really be arsenic, it may not have been introduced by the analytical processes, in ways which the chemist could neither understand nor explain. In the case of Lucretia Chapman, charged with poisoning her husband, by administering arsenic, the learned and scientific chemists, who made that analysis, mistook mercury for arsenic. In commenting on the case of Mrs. Chapman, her distinguished and accomplished advocate, (Mr. David Paul Brown,) made some remarks, so appropriate to the question I am discussing, that I will quote them, as I am sure their truth will commend them to you. In alluding to the analysis, he says: “New combinations, or new substances may so simulate poison, in the application of your dry and liquid tests, as to confound one substance or metal with another. As far as you go, you may distinguish by means of the tests; in other words, you can show what it will detect, but you cannot show what it will not, and the one is just as necessary as the other, in many of the questions that arise.”

I ought further to remark here, upon the snbject of the analysis, that Dr. Doremus made a report, which he read to the coroner's jury, to which my colleague, (Mr. Cushing,) has already referred. He says, alluding to the analysis made by him of the viscera. “that owing to the peculiar nature of these stains, and their faintness, which permitted only a

partial proof of their arsenical character to be exhibited, deponent deemed it essential to submit the entire body to chemical analysis. The deponent would here state, that had he been called upon to decide, at *this stage* of the 48 analysis, as to the *presence* of a poison he would have been unable to have presented the coroner's jury with testimony of a positive character." I have used, that there may be no mistake, his very words. The quantitative analysis of the viscera, as we have shown, produced but one fifth of a grain of arsenic. Subsequently, with the assistance of Drs. Zenker and Budd, the soft tissues, which were in a remarkable state of preservation, were dissected from the skeleton, and examined by several different chemical processes. Now, what I particularly desire you to notice, in this connection, is that it was after the analysis had been made of the viscera, and before the dissection of the soft tissues, that Bell, the mau who originated the charge against the prisoner, touched the body of Mrs. Stephens in the dead house, and, it was also after that, that the bones and soft tissues were analysed and produced the bulk of the arsenic. It was stated by John O'Brien, the keeper of the dead house, to which the remains were taken from Greenwood Cemetery, "that he saw Robert Bell in the room where the body was. That persons would come in and would look at it, and go round the table upon which it was, and they might have felt the flesh, and remarked how hard it was. I was told by Dr. Wood, not to let any body touch it. They might have done it, and I not thought any harm of it. I saw Robert Bell in the room, four, five, or six times," Now. Bell swears that he *did* touch the body, as a matter of curiosity, while it was in the dead house, and before the analysis. The following persons, besides Robert Bell were also in the dead house, after the viscera was removed, and before the analysis of the tissues and body, viz. Julius 49 A. Candy and his brother-in-law, Fanny and Sophia Bell, Samuel Cardwell and others. If such extreme care was considered necessary, in order to ensure certainty in the analysis, what reliance can be placed upon it, when it was thus exposed to the touch of every one, and when arsenic, either by accident or design, might have been introduced into it. It is preposterous to say, that Bell did not know that the whole body was to be analysed. He did know that his sisters, in their affidavits made before Justice Welsh, on the twenty-first day of September, 1858, had sworn, that Mrs.

Stephens death was occasioned by arsenic, and when he found that the viscera had been removed, it would not require much intellect in him, to believe that it had been taken for the purposes of analysis. He knew there was no earthly motive whatever for exhuming the dead body, except to ascertain whether it contained arsenic, and he understood as well as you do, that it must be done by analysis. Should the man, whose malice impelled him to attempt the assassination of the prisoner, have been permitted to approach the remains of Mrs. Stephens, or his polluted hand to come in contact with her dead body? Do you believe that he would hesitate, if it were required to accomplish his fell purpose, to introduce into these remains the arsenic necessary to convict the prisoner, if it could be done with safety and without danger to himself? The law requires that those portions of the human body that are to be analysed for the purposes of evidence, should be kept so that access could not be had to them, particularly by those who might have an interest in discovering poison. In Wharton and Stille's *Medical Jurisprudence,* 50 sect. 839, this point is particularly dwelt upon. It is there said to be necessary, “to preserve the specimens to be analysed in such a manner as to protect them from all influences calculated to produce deception, or lest poison be introduced into them by accident or artifice.” Is it not manifest, that all these wise precautions have, in this case, been disregarded, and that access was permitted to them from the most dangerous sources? Can you rely upon an analysis made under such circumstances as a means of proof, and, upon the strength of it, blot the life of a fellow being out of existence? What confidence can be reposed in it, after you are assured that Bell touched the remains, and that his two sisters, and Cardwell, “the head and front of this offending,” had frequently access to them? “I speak unto you as wise men, judge you what I say.” I will not further weary you nor exhaust myself. My object has been to caution you against trusting too implicitly to chemical evidence, and my regret is that the prisoner was deprived of the services of my learned colleague, Hon. Daniel Ullman, whose engagements elsewhere compelled him to withdraw himself from the cause, before its conclusion. He had thoroughly prepared himself to discuss the chemical and medical branch of the evidence, and if he had addressed you, would, I am sure, have

demonstrated its unreliable character as a proof of guilt, I have imperfectly shadowed forth some of the views he designed to present, and I submit them for what they they are worth.

I desire now, to call your attention to another matter. Mrs. Stephens died on the twenty-third day of 51 September, 1857, and her remains were exhumed, under the direction of the coroner, on the twenty-third day of September, 1858, having been interred exactly one year. The medical testimony is, that the remains were in a remarkable state of preservation. The statement of Dr. Wood is that the body had not shrunk any, as far as he could discover—that it was plump and full, with the exception of the head, which was in an advanced state of decomposition, which he accounted for by the injection of the fluids of the stomach, and by the gasses they had generated. The circumstance of the body of the deceased being well preserved, is adduced as presumptive proof that she came to her death by means of poison, and it is dwelt upon by the prosecution, as entitled to great weight. It is upon the ground, that the effect of arsenic is to prevent decay, and is used in dissecting rooms for that purpose. In my mind, it is the fact of least consequence in the cause, and no inference can be legitimately derived from it to warrant the belief that Mrs. Stephens died from any other than natural causes. It is not a circumstance that any of the writers on forensic medicine consider of value. Indeed, the facts relative to the effect of arsenic upon the putrefactive process, are of a very contradictory character. A number of cases are quoted by Dr. Christison, which appear to prove a remarkable anti-septic property in arsenic, by which not only the digestive organs, but the whole body, has been preserved from the ordinary changes of putrefaction. On the other hand, Geoghegan has observed examples of very tardy and very rapid decomposition in cases of arsenical poisoning. Hence, Wharton and Stille, (Medical Jurisprudence, 7 52 sec. 589,) say, the medical witness can not be authorised to assert, that because the body has resisted more or less completely the progress of putrefaction it is due to arsenic, since it may be really attributable to other causes.“ This latter view of the matter, is confirmed by history and experience, and a variety of interesting instances might be cited, where bodies have resisted the ordinary course of decay. One of the most remarkable, that at present occurs

to me, is the case of Napoleon Bonaparte. He had been buried twenty years, and when his body was exhumed, the historian states, “that to the surprise of all, the features of the Emperor were so little changed, that he was instantly recognized by those who knew him when alive. His military dress exhibited but slight decay, and he reposed in marble beauty as if he were asleep. The emotion experienced by all was deep and unutterable. Many burst into tears.” Another striking case is, the sacking of St. Denis, and the violation of its tombs, by the revolutionary mob of Paris in 1793. Among the bones scattered by the mob, were those of Henry I. Francis I. Louis XII. Even the glorious name of Turenne, says the historian, could not protect his grave from spoliation. His remains were almost undecayed, as when he received the fatal wound on the banks of the Lech. A still more striking case is to be found in the second volume of Monarchs retired from Business—the history of Maximian. The baffled criminal, in wild despair strangled himself in his dungeon at Marseilles. It was in the year 310, when the unwilling suicide was in the sixty-eighth year. *Seven centuries and a half later,* a leaden box was discovered beneath a part of Marseilles; it was opened, 53 and therein was seen the body of an aged man, flesh and entire, and bearing the marks of strangulation. The body was generally said to be that of the unsceptered Maximian. I could refer you to many other examples of bodies which had long resisted the ordinary conrse of decay, and were well preserved, after having been buried long series of years. It is, however, unnecessary for me to do so. My object was to demonstrate that Medical Jurisprudence, as well as history, concur in establishing the fact, that you have no right to infer the existence of arsenic from the circumstance that a human body has resisted the decomposition, which ordinarily occurs. I trust I have established the position to your entire satisfaction, and will proceed to another branch of the case.

I come now, gentlemen of the jury, to consider another circumstance, from which it is inferred the death of Mrs. Stephens was occasioned by arsenic. It is derived from the symptoms her disease exhibited in her last illness. They are stated by Fanny and Sophia Bell, and are so extraordinary and marvellous, that I especially call your attention to them. My conviction is, that what they have said is a sheer fabrication; for they have sworn to

all the symptoms of arsenical poison described by the physicians, and mentioned in the whole *materia medica.* Their testimony, in respect to them, is not corroborated by any of the other witnesses, but is contradicted by all who speak on the subject. They never existed in any case, much less in that of Mrs. Stephens, and from the nature of things, it seems to me impossible they were ever combined in a single individual. If they were, then her 54 case is the most remarkable that has occurred since the beginning of time, and will hereafter become conspicuous in Medical Jurisprudence! Well did Dr. Alonzo Clark remark, in reference to these symptoms, in his very intelligent testimony, that he never read or heard of such a case. According to Dr. Taylor, the symptoms of arsenical poison vary in different persons, according to the form and dose in which the poison had been administered. Most writers classify the cases, and while they admit some are anomolous, and cannot well be brought into classification, yet none of them imagine it possible a case could occur that would embody them all. Recollect, also, that neither Dr. Cadmus nor Dr. Iremonger, who attended the deceased in her last illness, and described the symptoms of which she complained, state such as were mentioned by these girls. They swear, that during their attendance, they never suspected poison, and Dr. Iremonger in particular, who visited deceased within thirty-six hours of her death, and who was a witness before the coroner, after the charge of murder had becn preferred against the prisoner, swore on that occasion, that he did not believe Mrs. Stephens' death resulted from poison. In fact, no witness in the cause has sworn, that she died from any other than natural causes, and I will endeavor to make this clear beyond all doubt. Do not imagine that I ever did believe, or that I now believe, that Fanny and Sophia Bell ever thought their aunt had been poisoned, notwithstanding they made affidavits to that effect before Justice Welsh; impelled to do so, no doubt, by their anxiety to release their brother from his imminent and threatening peril. I admit it to be possible, that these females may have so 55 often repeated the charge that Robert Bell invented against the prisoner, that they became in the end, the dupes to their own falsehood:—

“Like one Who having, unto truth, by telling it, Made such a sinner of his memory, To credit his own *lie.* ”

But, gentlemen, we will examine this matter of symptoms in detail, and with that view, I respectfully ask your attention to the testimony of Fanny and Sophia Bell. It is necessary you should keep in mind, that the deceased was ill for about three weeks, and for two weeks of that time was confined to her bed. Their statement of symptoms I will read to you, and to ensure accuracy, from the paper prepared by the District Attorney, on which he predicated the hypothetical interrogatories he propounded to the medical witnesses. Fanny and Sophia Bell say, the symptoms were, “appearances of red spots before the eyes, dizziness and burning in the chest, feeling as if a ball of fire were moving up and down in the stomach, continuing to increase until death, complaining of the burning being from the bottom of the chest and coming up the throat, vomiting through the course of the sickness, vomiting with great pain-after eating and drinking, color of the vomited matter, first yellow, continuing so for some days, then of a dark green color, getting darker and darker till death, vomited matter containing red spots and appearances of little pieces of flesh on side of basin, mucus in vomited matter, pain in the pit of the stomach, increased by pressure, extreme thirst and drinking all the while, drinking everything cold—countenance changing, becoming very 56 anxious, languid, careworn and fatigued—eyes sunk, piercing expression—eyes having a sharp look—was a great deal debilitated, weakness of the limbs, numbness of the hands, coldness of the legs and feet for a week before death; two or three days before death, legs and feet were swolen and cold, clinching her hands and feeling for something all the while, inability to use hands or feet, having no power in hands and arms. whole side numb the night before her death, two or three days before death not answering questions readily, convulsive movements of the arms, constantly throwing her arms about the bed, catching hold of things, lips swolen, one week before death, suppression of urine, continuing until death, it being connected with pain, the discharges of fæces connected with great pain, and of a dark color, of a very offensive kind mixed with blood, cold perspiration on her hands, drowsiness in the last part of sickness, great stupor

and lassitude immediately preceding death, about two hours before death giving a horrid scream, and sinking away in exhaustion, growing weaker the longer she was sick."

What I have now read to you, are the symptoms which the case of Mrs. Stephens ' exhibited, according to the testimony given by the Bell girls, and, you perceive their statement embraces every supposable one that has ever been ascribed to arsenical poisoning. I do not credit the story that these symptoms ever had existence in point of fact; because, such a condition of things, would be against all experience; and, besides, the witnesses who describe them, are willing witnesses for the prosecution, anxious and desirous that it should not fail of its 57 object for want of the necessary proof. If the symptoms which have been represented, really did exist, then I must reiterate, what I have already affirmed, that it is the first instance, in the history of diseases, in which such a catalogue of ills were ever concentrated in a single individual, and, it is not propable, they ever will be fonnd in combination again. None of the other witnesses in the cause who visited the deceased, ever heard her speak, of them, and she never communicated them to the physicians who attended her during her last illness. I allude to Dr. Cadmus and Dr. Iremonger. Dr. Finnell, who was examined for the defence, a gentleman of great intelligence and experience in his profession, says "I never knew a person who had all the symptoms described by Fanny Bell; " and Dr. Alanzo Clarke, than whom a more learned and accomplished physician does not live, states, (alluding to the symptoms described,) "I do not remember any case where there were all these symptoms, I never saw one nor read of one. I am sure I never came across a case corresponding with them."

I desire now, gentleman of the jury, to examine the other testimony in the case, on the subject of symptoms, and you will perceive; that it is in conflict with the evidence of these females. Whenever other witnesses refer to portions of the case to which they have testified, they are always and uniformly contradicted, and in no one particular are they confirmed! Is there anything in their antecedents, so far as we know them, or in their conduct as it has appeared in this Court room, which should induce you to listen to them, in preference to the host of disinterested 58 witnesses who positively contradict them,

and who were examined on the part of the government and the defence? The stake they have in the event of this trial, involving as it does every interest that is dear to them—not merely their characters, but the liberty of their brother, makes it necessary that you should scrutinize their testimony with caution, for the pressure upon them, to lead you astray, is great and fearful. Can you confide in them and reject what was stated by Drs. Cadmus and Iremonger, the physicians who attended their aunt in her last sickness? They too, are witnesses for the prosecution, and much more likely to understand the symptoms of the deceased than these two prejudiced witnesses. Now what does Dr. Cadmus state? He says, “I cannot positively say what it was that ailed her. My impression is, it was *nausea,* sickness of the stomach and weakness. There was nothing in the occurrences which left any decided impression on my mind.” If the symptoms were such as Fanny and Sophia Bell describe, do you not believe they would have made a decided impression on the doctor, and that their marked and unusual character would have arrested his attention? The medical witnesses agree, that there are stages of symptoms in arsenical poisoning, which no physician can mistake in their succession; he might do so singly and alone, but he could not if seen in their order. The first visit was made by Dr. Iremonger, on the eighteenth of September, 1857, and he attended his patient to within thirty-six hours of her death, which occurred on the morning of the 23d. Visits were also made by him on the nineteenth, twensieth, and twenty-first days of the same month. He, 59 therefore, possessed the very best opportunities for observing the disease in its different stages, and yet, he says, “ *I am acquainted with the effects of arsenate. I had no suspicion at the time she was poisoned.* ” After the charge of murder had been formally made against the prisoner, Dr. Cadmus did not alter his opinion, but attributed the death to natural causes. When examined before the coroner, he testified he did not even then believe that the deceased had come to her death from the administration of poison, and notwithstanding all that has since transpired, he does not seem to have changed his mind. He describes the condition and symptoms of his patient as being those of inflammation of the stomach, (no doubt the true cause of death, for he had ample opportunities to form a correct opinion. He says, “I found her in bed suffering from vomiting and pain at the pit of the stomach

increased by pressure, the symptoms of inflammation of the stomach. She said very little to me. She was a great deal debilitated. I do not recollect anything about her mouth and lips. I do not recollect that she asked for water. From the other symptoms she must have been thirsty as a matter of course." You cannot fail to perceive, from this evidence of the physicians who attended Mrs. Stephens during her illness, and who prescribed for her, that the enumeration of symptoms given by them, is in conflict with the exaggerated account stated by the BELL girls; but, if the statement of the latter were true, it would not, in my judgment establish the fact, that the deceased came to her death from poison. Dr. Alonzo Clarke, when asked in respect to the symptoms described by them, whether they were not evidence of arsenical poison, answered, 8 60 " *I should be compelled to entertain very grave doubts of it.* " The truth is, there is very little difference between the symptoms of acute inflammation of the stomach, and those produced by poison. Dr. Clarke makes this emphatic statement, and there was so much of intelligence, candor and caution in his manner of testifying, that it cannot fail to have made a deep impression upon you. He says, "there is very little difference, and I do not know that there can be said to be any clear difference between the symptoms of acute inflammation of the stomach, and those produced by arsenic, as its thirst, sense of burning, &c., are alike. The sensation of burning in the stomach is a very common one in cases of dyspepsia, and is sometimes very distressing." As my design, at present, is simply to demonstrate that all the witnesses in the cause, who spoke on the subject of symptoms, flatly contradict the Bell girls, and fully confirm the testimony of Dr. Cadmus and Dr. Iremonger, I will refer you to their evidence. There are eleven of these witnesses. I will mention their names, as they include those who have testified for the prosecution as well as the defence. They are Catharine Meehan, Ann Fee, Mary Pullman, Joanna Brandon, Susan Hannah, Isabella Bennett, George Davis, Maria Hannah, Catharine Stuart, John Stephens and James Hannah. These witnesses all seem to agree upon the following symptoms: a burning pain in the chest or pit of the stomach, increased by pressure, nausea, vomiting after eating or drinking—desire to drink cold liquids—weakness and prostration. These are the symptoms described by thirteen witnesses, including the two doctors who attended deceased, and

I am sure you will not consider 61 me wrong, in asking you to believe them, in opposition to the questionable statements of the two females above alluded to. To prove too much, is equally as fatal to testimony, as to prove too little. How then can you believe witnesses who are contradicted on every point to which they have spoken? If you do credit them, under such circumstances, and find the prisoner guilty, you will only add another to the bloody records of the unfortunate, over which those who come after you may pore in sorrow.

Permit me here, gentlemen of the jury to refer to what I consider as the strongest proof, that the symptoms of which Mrs. Stephens complained, did not arise from arsenical poison. She had, as you know, a conviction, during her last illness, that she would not recover. This belief had its origin, in what her physician, (Dr. Cadmus,)had told her two years before, when she suffered with a similar sickness. The former illness is spoken of by Mrs. Fee; she states, “that Mrs. Stephens told her in reference to that previous sickness, that Dr, Cadmus had said, that if she ever took it again, she would never get over it.” The prosecution did not call Dr. Cadmus to contradict this statement, although they examined him on other points, but, doubtless, would have done so, if the statement, in this particular, could have been shaken. Susan Hannah says, “that the symptoms she complained of in her former sickness were similar to those she endured in her last.” Isabella Bennett says, “I knew her to be sick two years previous to her death. I saw she vomited that time. She then complained of the same heaving off the stomach, and of pain 62 her side. As long as I have known her she has been affected by this throwing off the stomach.” Maria Hannah, says, “that two years before her death, she was confined to her bed. She then threw off, and had the same symptoms as at her last illness. She was subject to this same throwing off even when in apparently good health. She complained also two years before of pain in her side. I saw no difference between the symptoms then and at her last illness.” John Stephens, states that he, “knew she was in habit of vomiting before her last sickness, and was in that habit four years before her death.” Another witness, and the last to whom I will refer, on this subject, James Hannah, says, “that Mrs. Stephens told me

that Dr. Cadmus said, that if she was affected with the same complaint again, she would never recover. This was spoken in relation to the sickness she had two years previously. I knew her for the last fourteen years, and during all that time she had the same attack of heaving off. She had it in the old country—in Ireland." Now, here are no less than seven witnesses who speak upon the subject of Mrs. Stephen's former sickness, and whose statements are clear and precise. No one, at that time, ever imagined or suggested the idea of poison, and yet, it could have been made, if predicated upon symptoms, with quite as much propriety as it is made now. In all respects the two sicknesses seem to have been similar. Is not the fact that there was a previous sickness, with similarity of symptoms, strong presumptive evidence, that her last illness was but a repetition of her former complaint? Her former sickness must have been serious and dangerous; for, Dr. Cadmus predicted that she 63 could not survive a similar attack, and in his opinion, he was not mistaken. It resulted exactly as he supposed it would. No one at that time—whether physician or friend ever believed that poison had any connection witht he former sickness, and, it is remarkable, that none except the Bell girls suspected it in her last. They whisper it in one year after their aunt had been carried to her narrow home, during all which long time they kept the dark secret concealed within their bosoms, notwithstanding Sop'a. Bell, mysteriously hints that her dying aunt desired her to see it. When the matter is revealed, it is under such cirstances of suspicion, and "com'st in such a questionable shape," that it cannot be credited. Their brother was arrested on a charge of felonious assault, and was in the custody of the law, and some device became necessary to save him from its consequences. The prisoner was the prosecutor, and the most feasible plan that suggested itself, was to turn the tables, and charge him with a higher crime. It was done, and has had one of the intended effects, so far as Bell is concerned; for, it has relieved him from the penalties of his guilt, but, thank God, it has not yet placed his intended victim beyond the securities of a juror's oath. It is for you, gentlemen, seriously to consider, whether it shall.

I propose now, passsing from the consideration of the analysis, the symptoms, and the former illness of Mrs. Stephens, to another topic, after I shall have made one or two additional suggestions respecting them. It is, to remark, that the medical testimony for the defence, established the fact, that the analysis 64 so much relied on by the prosecution, even supposing it to demonstrate the presence of arsenic in the body, does not by any means make out the fact, so necessary to be proved, that the deceased came to her death by the administration of poison. Dr. Finnell, expressly states, that if a case should be presented to him, in which the stomach exhibited very slight redness of some parts of its outer surface, and scarcely any on the interior, and no arsenic whatever was found in the contents of the stomach, or in any analysis of the walls of the stomach, and very slight traces or faint stains in the intestines and liver, and arsenic should be found in the osseous structure, the muscular fibre and the adipose tissues, he would not say, from his own experience, and his knowledge of the standard authorities, that the death was attributable to arsenic. He would say, however, that arsenic was in the body, but not that the person had died from it; for the reason, that he always found arsenic in the stomach and intestines, even where the patient vomited freely. Violent vomiting and purging would fail to dislodge it from the stomach. Dr. Clarke, also states, that where arsenic is taken into the stomach, in doses beyond what, are deemed medicinal, and the person vomits considerably, the whole of the powder is not thrown off, and it is common to find it entangled with the mucus. He adds, “that where the arsenic was in process of elimination, I should feel very great doubts whether it would kill under such circumstances.”

I now pass on, gentlemen of the jury, to consider the last point upon which the prosecution rely to establish the guilt of the prisoner. It is the proof made 65 by Michael Flynn, that he purchased arsenic from him on two occasions, while his wife was ill. Without explanation, I concede, this would be, in itself, a suspicious circumstance, but when satisfactorily accounted for, is of little consequence. Flynn's shop was near the residence of the prisoner, and to it he was accustomed to resort, according to the testimony, some two or three times a week. I cannot comprehend how, if his object in procuring the arsenic, was

to poison his wife, he would obtain it at a place where he was so well known, and to which he was accustomed to resort, when it would enable the fact to be readily traced home to him. If he designed it for a guilty purpose, he would, most naturally, have purchased it at some remote point, and in that way render it more difficult for those who might suspect him, to ascertain the fact. The circumstance that he bought it openly, where he was accustomed to deal, makes strongly in his favor, so far as an innocent use of the article is to be presumed. But, it is fully and satisfactorily explained by the testimony of James Hannah, who swears, that the arsenic was procured for him, and that he purchased it upon two occasions, once the latter part of July, and the second time, the latter part of August. That on the first occasion, he went into the store with the prisoner, while Mrs. Hannah, waited outside on the pavement, and that on the second occasion, the prisoner was in the store, and was talking to old Dr. Cadmus, (who is since dead,) when he entered and procured it. Mrs. Hannah corroborates this statement, and Mr. Hannah swears further, that after the charge of poisoning his wife had been preferred against Stephens, he (the witness,) met Michael Flynn, and that the latter said 67 to him, in the presence of Richard Stephens, I understand you are the man to whom I sold the arsenic, and you had better see to it. The arsenic was purchased for and actually applied to the destruction of rats. The manner in which it was used, has been stated by three witnesses, viz. James Hannah, Maria Hannah and Susan Hannah. None of them are contradicted in these particulars, and unless you disregard their evidence, you cannot find the prisoner guilty from the fact, that arsenic was purchased of Michael Flynn.

I will now ask your attention, to another circumstance that has been strongly urged against the prisoner, as almost conclusive evidence of his guilt. I allude to the rice prepared for Mrs. Stephens, which, it is said, not only produced illness in her, but being partaken of by the child Bella, and by Fanny Bell, also caused sickness in them. The testimony respecting it is derived from Fanny herself, and she alone proves her indisposition. She states, that the prisoner sprinkled sugar upon it, which he took from a bowl standing on the table, and gave it to Mrs. Stephens, who ate some, and then offered it to her, remarking that it was

good, and requested her to partake of it. She did so, and soon became sick, and went to her room, and vomited. After some time, Bella came in from school, and seeing the rice upon the table, also ate some of it, became ill, and went into her mother's bed. The statement of Fanny is not corroborated, and should have no weight with you. She did not assert, in words, that what was placed upon the rice was arsenic, though, it is certain, she desired you to understand 68 that it was. It is clear, it could not have been poison; for, it was taken from a bowl, openly exposed in the room, and the proof is distinct, that what was put in the rice, came out of it. The prisoner, it seems, did not tarry at home to ascertain what would be its effect upon his wife, but returned to his business, without removing either the rice or the bowl which contained it. The fact, that he left it so exposed, is a strong circumstance in favor of his innocence. If guilty, its first promptings would have induced him to pursue a course calculated to prevent the rice from being eaten by others, lest his dark secret might, in that way, be revealed to the world. If the prisoner really sought to poison his wife, and prepared the fatal dose, and he administered it openly in the presence of Fanny Bell, and afterwards went to his work leaving the poisoned food to be eaten by others, then he differed from all other poisoners whose cases have attracted the attention of the courts. I cannot believe that any man, designing crime, would have perpetrated it in so stupid a manner, unless he were altogether demented and influenced by the rules of folly rather than of sense.

I am willing to concede, that food was prepared for Mrs. Stephens, and that sugar was taken from a bowl and placed upon it, and that the prisoner gave it to his wife. I will further admit, that this was done openly, in the presence of Fanny Bell, and that both Mrs. Stephens and her daughter Bella, became sick from eating it. It was not rice, however, but something that the other witnesses called flummery, a fact positively sworn to by Mrs. Bennett, and the child 9 69 Bella. That Mrs. Stephens and the child were sick is established by the evidence of Lucina Stephens and Maria Foley, who stopped to visit Mrs. Stephens and found her and the child in bed, suffering from the effect of what I have stated. What witness mentions that Fanny Bell was sick on that occasion? Not these

respectable ladies, whose names I have mentioned, for they did not see Fanny, and nothing was said to them respecting her. If Mrs. Stephens communicated to them, as they said, her own and her child's sickness, assigning the reason, would she not also have alluded to the fact, (if it were so,) that Fanny Bell became sick from the same cause? She did not say so, and you must necessarily account for this singular circumstance, in the best way you can. The evidence is that Fanny Bell was not sick on that occasion, and her statement that she was, is contradicted by two intelligent witnesses. Mrs. Bennett and Bella swear positively, that Fanny was not sick that day. They ought, surely, to be credited against the testimony of Fanny, whose statements are always insincere, from the fact that she is constantly deviating from the truth. But, what should satisfy you fully on this subject, is the additional circumstance, also stated by Bella and Mrs. Bennett, that when Fanny actually was sick, which was on a different day, it arose from imprudently eating cold cabbage. She deliberately makes, you perceive, an effort in this court room, to lead you to believe that her sickness which occurred from another cause, and on a different occasion, had its origin from partaking of the same flummery that caused the illness of her aunt and Bella. Should not this fact arrest your attention, and induce you to ponder 70 long and carefully, before you permit it to influence your judgments? I respectfully ask you to consider these views, and give to them the consideration to which they axe justly entitled.

I ought, in this connection, gentlemen of the jury, to state that the indictment against the prisoner, contains *two* counts, one of which charges the murder to have been perpetrated by means of arsenic, and the other by the administration of laudanum. That the deceased came to her death by means of laudanum, is not, I believe, seriously urged upon you. I have no doubt, that the original purpose, was, to rely upon laudanum, and that the notion of arsenic was a device, not contemplated until after the interview in Mr. Schaffer's office. I have already stated, that Fanny and Sophia Bell were there, the chivalrous Robert, and the mysterious physician, whose name is concealed, to whom the symptoms under which Mrs. Stephens labored, in her last illness, were communicated, and he said it seemed very much like arsenic. Almost immediately afterwards, to wit, on the twenty-first day

of September, 1858, Fanny and Sophia Bell went before Justice Welsh, and swore to affidavits, drawn by Mr. Schaffer, in which they charged, “that Mrs. Stephens came to her death by laudanum and arsenic, administered by her husband.” The story of the laudanum is thus stated by Fanny, and like all her other statements, is without corroboration from any source. She says, that on the day preceding her aunt's death, the prisoner gave it to her three times, and that about two ounces were given at a time, judging from the size of the vial she described. It was administered openly. 71 The bottles were labelled laudanum, and one of them she noticed came from the store of Shipley & Vanderhoof, because their names were on it. I can scarcely credit this statement, for it seems in itself impossible, and also, because the administration of so much laudanum, in a single day, to one not accustomed to it, would have been attended with marked, if not serious results. According to the physicians, it would either have produced stupor, from which it would be difficult to arouse the patient, or caused excitement, which, for the time being, would naturally have influenced her mind, and made her conversation incoherent and unintelligible. Neither of these consequences followed, and it was attended with no marked results of any kind—she was sensible and clear in her conversation, and there was an absence of all disposition to sleep. This statement is so very singular, and so much out of the usual course of things, that it will require great faith, probably not as much as may be necessary to remove mountains, but more than is commonly possessed by jurors, to induce you to credit it. But, what makes the evidence of this witness altogether unreliable is this: she could have been confirmed, in this particular, if her statement were true, and the omission to do so, on the part of the prosecution, is a singular circumstance. I desire you to remember, that the State examined Mr. Vanderhoof, the apothecary, but did not ask whether he had sold laudanum to the prisoner, the day previous to his wife's death. Had the fact been so, and had Mr. Vanderhoof answered it in the affimative, it would have been the strongest confirmation of what Fanny had said. The omission to ask the question, and thus fortify the statement 72 of this witness, is a remarkable fact, to which I invite your attention, assuring you, that it did not arise from forgetfulness on the part of our friends, but from a more significant reason. I leave it to you to judge what it was.

Having considered, gentlemen of the jury, all the circumstances from which the guilt of the prisoner has been inferred, I am now prepared to ask you, has the prosecution established his guilt to your satisfaction? It is a serious and solemn question, and is the great issue you are sworn to determine. It is not to be settled by conjecture, or probabilities, but must be affirmatively established by evidence, and that beyond all reasonable doubt. It has not been so made out in this ease, but the proof of guilt is sought to be inferred from circumstances which cannot warrant such a presumption. In other words, it is not a case of positive proof, but one purely of a circumstantial character; for, no witness has sworn that the prisoner ever administered arsenic to his wife. It is charged he did, and that it occasioned her death, and the design of the chemical analysis, was to sustain the accusation, by showing that it was found in the remains of the deceased. It is certain, no witness has sworn that the prisoner gave his wife arsenic, and no physician has testified that arsenic produced her death. You are expected to do what every witness has carefully avoided, viz. swear that Mrs. Stephen's death was occasioned by arsenic; for, your verdict, finding the prisoner guilty, is your oath to that effect. Is it not unreasonable to expect that you will do that from which every one else has shrunk back appalled? Yet 73 you must, if your verdict should be guilty, and before you arrive at so fearful a conclusion, I have a few words of warning and of caution to address to you.

I remark, that it is urged against us that the arsenic, which, it is alleged, produced the death, was administered in a powder, and Fanny Bell, (who never fails to swear to what is deemed essential,) states that it was of a white and yellow color. It occurred while Doctor Iremonger was attending the deceased, or very soon afterwards. His prescriptions have been produced in court, and among them is one for a powder composed of white sugar and morphine, which was put up by Shirley and Vanderhoof. The powder administered by the prisoner to his wife, in appearance resembled that which the prescription called for, and it was given without attempt at concealment. Surely, you will not infer the existence of guilt from the administration of a powder exactly resembling that prescribed by the physician, when there were no attendant circumstances to create suspicion. There are

some matters connected with the administration of the powders, and the statement of Fanny Bell respecting them, that merit consideration; because, she swears positively she never gave her aunt any medicines. It is exceedingly difficult for me to credit her statement, even if there were no evidence in opposition to it. Her object in remaining at home was to attend upon her aunt, the prisoner being generally absent at his place of business. Is is not reasonable to suppose that there must have been periods when medicines were required and given by the attendant who was present? That attendant was Fanny Bell. I cannot conceive how, in the nature of things, she could have 74 been with her aunt during her whole illness of three weeks, and not once have administered the medicines designed for her relief. But, is not her statement positively false, and opposed to the testimony of four witnesses? Does not the child Bella distinctly state, “I saw Fanny Bell give my mother powders. She gave them on a table spoon.” It cannot be pretended that any person told the child what she states, for she adds, “I saw it myself,” Besides, Isabella Bennett, James Hannah and Maria Hannah positively state they saw Fanny Bell during the last week of Mrs. Stephens sickness, give her powders. How can you account for the fact that Fanny Bell is never corroborated at any point, or by any other witness in the cause, but is uniformly contradicted? Is she to be believed against and in preference to all the other testimony? Is perjury to be charged against every other witness, that she may be sustained? Does the State require whole hetacombs of victims? You cannot find a verdict of guilty without necessarily involving the great mass of witnesses who have spoken in the cause in the guilt of perjury. I trust that you are not yet prepared to do an act that shall inflict such terrible and awful consequences.

I have already remarked, gentlemen of the jury, that I do not believe that Mrs. Stephens death was occasioned by poison, but supposing the fact to be established, it is no part of my professional duty to show who perpetrated the deed. My business is to demonstrate that it is not to be attributed to the prisoner. No evidence brings home to him the charge of guilt, and what is chiefly relied on to establish it, does not 75 amount to probability, much less certainty. Hence, it is not my purpose to charge the murder upon any human

being, but to call your attention to a view of the case, that possibly may not have occurred to you. Suppose the position of the prisoner at the bar and Fanny Bell were changed, and that Fanny were in the dock, and the prisoner on the witness stand. Would not the case, upon the evidence adduced before you, be much stronger against Fanny Bell than it is against James Stephens? Fanny swears she never gave her aunt any medicines, yet four witnesses affirm positively they saw her give her powders. Where would the prisoner be to-day, and what would be his chance for acquittal, if it had been proven by the prosecution, that he denied having ever administered powders? The falsehood and prevarication would be urged as almost conclusive evidence of his guilt, and according to the authorities, might properly be so considered. If Fanny were on trial, the proof would be distinct against her, that she administered powders, and falsely denied the fact, and the death being occasioned by arsenic, it would create strong and violent presmuptions against her. Now, I do not charge any such act upon her, but the very contrary; for, I am by no means satisfied that Mrs. Stephens died of poison, but believe the death resulted from natural causes. In the case of the prisoner, it has not been shown that he has ever made an untrue representation either as to the sickness of his wife or the circumstances connected with it, and I have alluded to the subject, to show you, that there are no moral evidences of guilt in his case, such as apply to Fanny, arising out of her wilful departure from the truth. 76 How, then, can you be gravely asked to convict the prisoner, upon the more than questionable testimony of Fanny Bell, when she has shown so marked a disregard to the obligations of the ninth Commandment? I am conscious, the District Attorney, (Mr. Waterbury,) in summing up yesterday, greatly eulogized these Bell girls, and attributed to them all that was exellent and amiable in character. Notwithstanding what he has said of them, I know enough of you to believe, judging from what you must have observed on this trial, that you would not willingly make them the companions of your wives and daughters, and that your pure natures would instinctively revolt at such a suggestion. If I have mistaken your feelings in some matters, I have not done so on this point, for your honest hearts must respond to all that I am saying. If Fanny and Sophia are so excellent in the eyes of the District Attorney, and he chooses to hold them up

to you as models for female imitation, he has, in doing so, at least furnished you with a standard by which you can judge of the elevation of his taste. They are *his* carefully selected specimens, and while I would be sorry to say or do anything that would separate him from their company, I may still remark, that they are not the sort of jewels, the Roman matron Lucretia gloried in, when she pointed to her children with just pride and exultation.

I am now, gentlemen of the jury, approaching the conclusion of what I have to say to you, and there remains but one other topic to which I invite your attention. It is an exceedingly interesting part of the case, and involves considerations which must enter 10 77 into your discussions when determining the question of the guilt or innocence of the prisoner. I allude to the moral evidences of guilt, derived from the conduct of the accused. I will refer to the testimony, and afterwards apply it to these moral tests. I have heretofore remarked, that poisoning is, in all cases, a secret offence, and I design to apply that fact to the act of the prisoner. What was his conduct and demeanor towards his wife during her last illness, and, under what circumstances, did he administer food and medicine to her? Was it open, and subject to inspection, or was it hidden and concealed? To ask the question, with the Whole proof concurrent, is to answer it. Certain it is, what the accused did was open to the observation of all. He brought the laudanum into his dwelling—exhibited the bottle that contained it—indicated where it was purchased, and actually administered it to his wife in the presence of Fanny. So it was with the powders—they also were given before her and every other person who chanced to be in the room. When the deceased vomited, and there was anything peculiar in the matter thrown from her stomach, the basin that contained it was carried by him to the window, and Fanny was requested to notice its contents. Did poisoner ever before proceed in this way, to execute his wicked purposes? It is against reason, and at war with all the cases that have been submitted to judicial cognizance from the earliest times to the present.

The *first* rule of moral evidence of the guilt of an accused party, is *giving false and inconsistent accounts of the death of a deceased person.* This is exemplified 78 in the case of *Rex v. Donallen,* Gurney's Report, 781. There, the accused represented to some

persons, that the deceased had died of a cold occasioned by wetting his feet, although in fact they had not been wet; to others, that the cause of the death was rupture of a blood vessel, and, to others, that it was a veneral complaint. In the recent case of *Regina v. Tawell,* the prisoner falsely alleged the deceased had poisoned himself. The prisoner on trial before you, was always consistent in what he said and did; and there is no proof showing that he gave, on any occasion, false and contradictory accounts of the *cause* of his wife's death, and it is not hinted or pretended that he did. Hence, there is the absence of the *first* moral test, indicating guilt in the accused.

A *second* rule of the moral evidence, from which guilt is not unfrequently adduced, is *giving improbable or contradictory accounts of the manner of the death,* where the accused claims to have witnessed it. The first rule, I have stated, has reference to the *cause* of the death, and, the one I am now considering, to the *manner* of it. A strong exemplification of it is found in the case of the *State v. Cecely,* 13 Smedes & Marshalls Report, 206. There, the prisoner, at one time said the murder was committed by five soldiers, and that she was awake when they entered the house, and saw them enter. At another time, she said, she was asleep, and did not see them enter. This second rule has no application to the prisoner on trial; for, in reference to the manner of his wife's death, as well as on all other subjects, his statements were consistent and true, plainly indicating his innocence.

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A *third* rule of moral evidence is *refusing to look at the body of the murdered person.* It is said, that repeated observation has shown, that there is a great repugnance on the part of murderers to look upon the bodies of their victims. Many cases, exemplify this principle, and a leading one is Mrs. Spooner's case, (2 Chandler's American Crim. Trials, 13). There, the female criminal had procured the murder of her husband, and the concealment of his body in a well, but she could not be persuaded to look at it for a long time. This fact was very strongly relied on in the case of James Stewart, reported in 19 State Trials, 156, and was pressed with great ability. A modern case is that of Peter Robinson, which occurred

in New Jersey. The deceased had been secretly killed in the prisoner's own house, and buried under the basement floor, and the prisoner did not sleep in the house a single night after the deceased disappeared. He stated he would not sleep nor live there, unless some one moved in with him, assigning as a reason, that his children died there suddenly. I have extracted this case from *Burrill on Circumstantial Evidence,* page 462, a most reliable and philosophical work, and which, in my judgment, is invaluable as a treatise on presumptive evidence, and which no lawyer can read without great interest and profit. The rule under consideration, does apply to the prisoner in this case. What he did was a proof of innocence and not of guilt. After the body of his wife had been exhumed for the purpose of analysis, he implored the officers of justice to permit him to see it, but without success. A deaf and heavy ear was turned to his entreaties. He might as well have appealed for sympathy to the marble jaws of the tomb. 80 The dead body was exposed to Cardwell, the Bell girls, and to all who desired to behold it. It was the impulse of nature within the breast of the prisoner, that prompted the desire to gaze upon the remains of her with whom he had been so closely connected in life, before the processes of the chemist had entirely dissolved them. It was cruel to refuse his request, but entirely consistent with the harsh spirit in which the proceedings against him have been conducted from their inception to the present hour. I am not here to complain of this severity, but to do my duty, as I best can, under the circumstances which surround the prisoner, many of which I conceive were not necessary for the ends of justice. What did the prisoner's desire to see his wife's dead body indicate, guilt or innocence? If it be true, that there is a great repugnance always existing on the part of a murderer to look upon the dead body of his victim, it does not apply to James Stephens as an evidence of guilt. Instead of endeavoring to avoid contact with it, he vainly implored the officers of the law for permission to see it, a fact which affords the strongest presumption in his favor. You must determine the weight which this circumstance is entitled to receive, when you come to consider your verdict. Before I leave the rule, however, which deduces guilt from a refusal to look upon the body of a murdered person, I ought to remark, that the same feeling has occasionally been manifested, in the strongest forms, by persons wholly innocent of crime, and who were satisfactorily

proved to have been so. The case of William Shaw, at Edinburgh, is a striking example of this latter fact. On coming into the room where his daughter lay a bleeding corpse, and seeing 81 a number of persons there who had forced an entrance, on hearing groans, he turned pale, trembled and seemed ready to sink. He was subsequently tried, convicted and executed. Afterwards, it was proved to have been a clear case of suicide, and the father was innocent. This latter case, and others that might be adduced, show that the moral rule I have been considering, is not one of universal application, but still, so far as it does apply, is in favor of the accused.

A *fourth* moral rule, indicating guilt in a prisoner, is, *confusion manifested at a sample inquiry.* The case of Drayne is an example of this rule. A person had suddenly disappeared, and his wife made inquiries of the ostler of an inn at which he had put up the night before his disappearance. She asked the ostler what sort of a hat he wore. He replied, a black one. Nay, said she, my husband's was a gray one. At which words he changed color several times, and never looked up in her face afterwards. The ostler had, in fact, committed the murder, and had the hat dyed from gray to black. It is certainly remarkable, that no confusion was ever manifested by the prisoner on trial at any inquiry, from the moment the charge was preferred against him to the present time. He has always been calm and composed, indicating a consciousness of innocence that must have impressed itself upon your minds. Some of these moral evidences of guilt are found in every reported case, and it is worthy of notice that all of them are absent in this. It is a singular feature, and only compatible with innocence, and, as such, I urge it upon you.

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A *fifth* rule of moral evidence of guilt arises from *casual observations,* made by a party, leading to important results. The truth of this rule has many striking examples; but, I shall allude to only two instances, both of which are doubtless familiar, and will be readily remembered. Eugene Aram was tried for the murder of Daniel Clark, in 1759. The murder occurred thirteen years before his arrest. An apparently slight circumstance in the conduct of Houseman, his accomplice, led to Aram's conviction and execution. A skeleton, believed

to be Clark's had accidentally been disenterred, and it having been determined to hold an inquest over it, Houseman was summoned to attend as a witness. His symptoms of uneasiness attracted attention, and having picked up one of the bones, he dropped the unguarded expression, “This is no more Daniel Clarke's bone than it is mine.” It was naturally concluded, that if he was so sure that these were not Clark's bones, he could give some account of them. The casual remark of Houseman led to the arrest and execution of Aram. It is a strange fact, that an expression almost similar to that used by Houseman, escaped from Dr. Webster, (Bemis Rep. 194,) convicted and executed for murder in Boston, after he had been brought in view of the deceased. He exclaimed, “That is no more Dr. Parkman's body than it is mine.” It cannot but be thought surprising, that if James Stephens poisoned his wife, and the long period of a year elapsed between her burial and his arrest, that no casual or unguarded expression escaped his lips, calculated to excite suspicion. Yet he never said or did anything 83 that directed attention to himself, or provoked the slightest censure of his conduct. It cannot be credited, that a man deeply steeped in guilt, concealing in his bosom the knowledge of a secret fatal to his repose, could so act and move in the presence of others, as not to say or do something calculated to cause remark. No expressions of a questionable or evasive character are imputed to the prisoner, and hence, this fifth rule of moral evidence of guilt finds no illustration in his ease.

A *sixth* rule of moral evidence of guilt, is *alarm and confusion in view of discovery, when the criminal finds his own person drawn within the sphere of the investigation.* Emotion and agitation, under such circumstances, axe among the most convincing evidences of criminal agency. Neither emotion nor agitation were exhibited by James Stephens, when arrested on the charge of poisoning his wife; on the contrary, he was calm and composed, though naturally indignant at those who fabricated the charge. The almost unerring evidence of guilt furnished by this rule, has no application to this case, and its absence is a strong circumstance in favor of the accused. Can he be guilty of the heinous offence of poisoning his wife, and yet be free from all the moral evidences which indicate guilt? Their utter absence ought to go a great way towards an acquittal, when the charge

is sustained wholly by circumstantial or inferential evidence. How you can reconcile it with the theory of his guilt, I do not understand, and I leave it as another question for you to consider.

A *seventh* rule, morally indicating guilt, is the last 84 to which I shall allude. It is strong and significant, and especially applicable to murder by poison. It is, *that the destruction of evidence necessary to present the case to the action of the law, is strong evidence of guilt.* This rule is philosophically true, for the desire to destroy the means of proof is naturally the impulse of a guilty mind. Had Stephens poisoned his wife, his first act would probably have been to remove the articles that tended to establish his connection with it. This was not done, but portions of food not taken by the deceased were left to be partaken of by any who might choose to eat them. This was, undoubtedly, the case with the flummery to which allusion was made, and with everything else. It does not appear that the prisoner ever removed, or attempted to remove, any of the articles in which the medicines were administered, or that he even washed them, so as to place the evidences of guilt beyond human discovery. He acted as an honest man would, and exposed all that he was doing to general observation. Surely, these things are not the indications of guilt, but the evidence of innocence, and you cannot fail properly to appreciate their force! Conduct, such as I have described, in a guilty man, can only be accounted for on the principle of insanity, for no rational being would act in this manner. The idea is at variance with the dictates of our nature, and only compatible with purity and honesty of purpose. How, then, can you convict the prisoner of murder, when there is not only no evidence to establish his guilt, but an absence of all the moral proofs indicating it, and that, too, where the party accused is of fair and unblemished reputation? This is a case entirely of circumstantial 11 85 evidence, and the absence of the ordinary and usual proofs should make you watch it with suspicion. The fact that it is sustained by witnesses of questionable integrity, impelled by hate to seek swift vengeance on the prisoner, should admonish you to be on your guard against their machinations. If you strike out the testimony of Sophia and Fanny Bell, the case of the prosecution will be left without support, and it is upon them, therefore, you must rely, if

you convict. You must not imagine that in every case an oath is sufficient to weigh down life and liberty, and that because guilt is sworn against a man you must condemn him. Fanny and Sophia have, in some things, sworn falsely, or else all the other witnesses are mistaken. I do not refer to the medical and chemical evidence. In an honest witness, the principle which says, " *thou shalt not bear false witness against thy neighbor,* " is as strong in the heart as when it was written by the finger of God, upon the tables of stone. If, therefore, you believe, that these girls have, in any particular, knowingly misrepresented the truth, their evidence should be blotted from your minds, "and leave no trace but horror and indignation."

One or two remarks more, gentlemen of the jury, and I have done. The evidence introduced upon the part of the people, is not *direct* or *positive* testimony, but is circumstantial, or what the writers on the civil law call *oblique* . Other legal authorities can it argumentative evidence, and under certain circumstances, it is a proper sort of evidence, as much as direct proof by witnesses. I freely admit, that circumstantial 86 evidence, when entirely clear, is, perhaps, the most satisfying and convincing kind of proof. The reason is, that circumstances are inflexible proofs which do not bend to the inclination of parties. Witnesses may be mistaken or corrupted, but things cannot. The circumstances must be clear, certain, and well connected, and no link broken in the chain, or else all will go for nothing. A great Scotch criminal lawyer, Sir George MacKenzie, (who lived in 1752,) speaking of inferential evidence, says, "Crimes cannot be proved by presumptions; for presumptions are only founded on verisimilitude, and what may be, may not be; whereas, all probations, especially in criminals, should be infallible and certain; *conclusio, semper debet sequi debilisrem partem.* " Another legal writer says, that "Twenty probabilities, allowed to be such, are not equal to one matter of fact well attested. They may strengthen the fact, but cannot supply it. They cannot be evidence in themselves, because one probability may be set against another, and so mutually destroy the force of each other. And as to suspicions and conjectures, who will pretend a right to indulge them where life is concerned?"

I have stated these principles, with the view of pointing out, how dangerous it is to rely upon circumstantial testimony. It ought never to be deemed sufficient to convict, unless every link in the chain of circumstances is complete. A reliance upon it has repeatedly led to the execution of persons whose entire innocence of the crime for which they suffered, has afterwards been clearly demonstrated. Owing to the latitude and discretion of reasoning in its application, 87 it is considered a dangerous species of evidence, and, where it places human life in jeopardy should be discouraged. On this account, a rule of law, has arisen, which I will read to you, and ask the judge to recognize, when he delivers his charge. It is stated in the case of *Hodge,* I. Lewens' Crown Side Cases, 227. It is, that " *where a charge depends upon circumstantial evidence, it ought not only to be consistent with the prisoner's guilt but inconsistent with any other rational conclusion.* " In that case, the prisoner was charged with murder. The case was one of circumstantial evidence altogether, and contained no one fact, which taken alone, amounted to a presumption of guilt. The murdered party, (a woman,) who was also robbed, was returning from market with money in her pocket; but how much, or of what particular description of coin, could not be ascertained distictly. The prisoner was well acquainted with her, and had been seen near the spot, (a lane,) in or near which the murder was committed, very shortly before. The prisoner, was also seen some hours after, and on the same day, but at a distance of some miles from the spot in question, bnrying something, which on the following day was taken up, and turned out to be money, and which corresponded generally as to amount, with that which the murdered woman was supposed to have had in her possession, when she set out on her return home from market, and of which she had been robbed. Alderson B., told the jury, that the case was made up of circumstances entirely; and that, before they could find the prisoner guilty, they must be satisfied, "not only that those circumstances were consistent with his having committed the act, but they must also be satisfied 88 *that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person.* " He then pointed out to them the proneness of the human mind to look for—and often slightly to distort the facts in order to establish such a proposition—forgetting that a *single circumstance* which is *inconsistent*

with such a conclusion, is of more importance than all the rest, inasmuch as it destroys the hypothesis of guilt. The learned Baron then summed up the facts of the case, and the jury returned a verdict of *not guilty.*

You cannot, gentlemen, fail to perceive the great importance of the case I have read. It shows, that a *single circumstance inconsistent with guilt,* is of more consequence than all the rest, as it destroys the presumption of crime. The facts, to which Baron Alderson applied this principal, were infinitely stronger in the case before him, to establish the charge of murder, than is the evidence adduced against Stephens, and yet an English jury acquitted the accused. Are not many circumstances in the present case, inconsistent with guilt? Is not the prisoner's admired good character, a presumption against its truth? Is not the frank and open manner, in which he administered food and medicines to his wife, inconsistent with the theory of crime? Is not the devotion and kindness he continually manifested towards her during her sickness, opposed to such a hypothesis? Is not the invariable harmony proved by disinterested witnesses to have subsisted between the prisoner and deceased, during their whole married life, a circumstance strongly at variance with alleged guilt? Is not the whole 89 body of the testimony, to which you have so patiently listened, against any such conclusion, and is it not in conflict with the prejudiced and flippant evidence of Fanny and Sophia Bell? Ought you not, then, to act upon the sensible suggestion of Baron Alderson, and avoid the proneness of the human mind to look for, and distort the facts, to establish a conclusion of guilt, and imitate the example of the British jury, in the case alluded to, and acquit the prisoner?

A single additional remark. You must be satisfied of the guilt of the prisoner beyond a reasonable doubt, otherwise you cannot find him guilty by your verdict. A rational doubt, by the humanity of the law, is to operate as an acquittal. It is the dictate of Divine and human jurisprudence, and must commend itself to your consciences and understanding. To convict and execute the innocent is fearful, and yet such instances have occurred, and will, most probably, occur again. Let not the case of the prisoner add another to the melancholy catalogue. We have Divine authority for asserting, that it is better that ninety

and nine guilty persons should escape, than that one innocent should be punished. See you to it, then, that if you do err, it be on the side of innocence and life! I fervently pray that wisdom may be vouchsafed you from High, to guide and enlighten your minds for the performance of your solemn and responsible trust.

I have now done, gentlemen of the jury, and leave the prisoner in your hands. I am conscious that my 90 colleagues and myself have performed our duty to the full, and have left nothing undone, within the scope of our ability, to present fairly and candidly his case, according to the truth, as exhibited by the evidence. We believe the accusing testimony presents no demonstration of his guilt, and, we therefore adjure you, “before you write his bloody sentence,” to ponder well what you are about. If, on the evidence you have heard, you condemn the prisoner, and should afterwards repent the act, I may not live long enough among you to trace the manifestations of your future sorrow. I can, however, retire from the scene, and feel that I am without blame, and without remorse, should the life of my client be forfeited by your verdict. I, therefore, leave you to the free exercise of your judgments in his case, assuring you of my entire conviction of his innocence, and fully appreciating my accountability hereafter to another tribunal for all that I have been saying. Should the life of the prisoner be taken upon the verdict you shall render, “very little of the responsibility will rest upon me,—the balance I transfer to you and your children.”

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